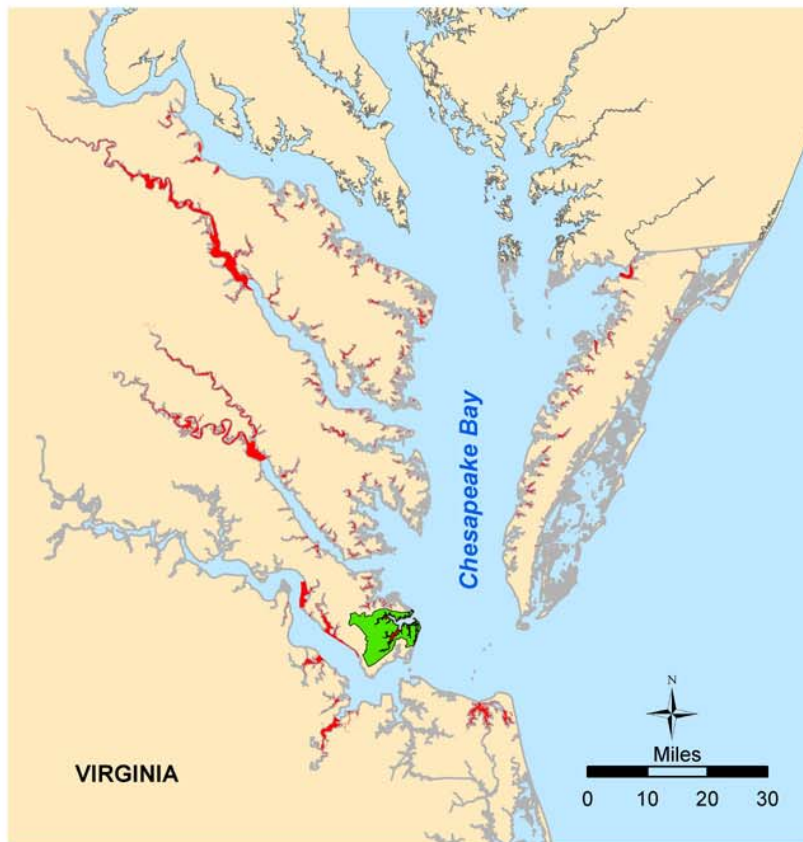


**Total Maximum Daily Load (TMDL) Report
for Shellfish Areas Listed Due to
Bacterial Contamination**

Back River



**Back River Watershed
Total Maximum Daily Load (TMDL)
Report for Shellfish Condemnation Areas
Listed Due to Bacteria Contamination**

Virginia Department of Environmental Quality

April 2006

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Total Maximum Daily Load Executive Summary

Total Maximum Daily Load Process

Management of water quality is a process intended to protect waters for a variety of uses. The first step in the process is the identification of desired uses for each waterbody. There are typically a number of physical, chemical and/or biological conditions that must exist in a waterbody to allow for a desired use to exist. In Virginia, most inshore tidal waters are identified as potential shellfish growing waters. In order to support shellfish propagation without risk to human consumers, shellfish waters must have very low levels of pathogenic organisms. Virginia, as most other states, uses fecal coliforms (FC) as an indicator of the potential presence of pathogenic organisms. To maintain the use of a waterbody for direct shellfish harvesting, the goal is to ensure the concentration of fecal coliforms entering the waterbody does not exceed a “safe” level. The safe level is set as the standard against which water quality monitoring samples are checked.

When water quality monitoring detects levels of fecal coliforms above allowable, “safe” levels, managers must identify the potential sources and plan to control them. The prescribed method for figuring out what must be controlled to attain the water quality standard is the calculation of a total maximum daily load (TMDL). The TMDL is the amount of fecal coliforms that may be introduced by each potential source without exceeding the water quality standard for fecal coliforms in shellfish growing waters.

The process of developing a TMDL for any bacteria impairment in estuarine or shellfish waters may be generalized in the following manner:

1. Water quality monitoring data are used to determine if the bacterial standards have been violated;
2. Potential sources of fecal bacteria loading within the contributing watershed are identified;
3. The necessary reductions in fecal bacteria pollutant load to achieve the water quality standard are determined;
4. The TMDL study is presented to the public to garner comment;
5. An implementation strategy to reduce fecal bacteria loads is written into a plan and subsequently implemented;
6. Water quality monitoring data are used to determine if the bacterial standard is being met for shellfish waters.

Different approaches can be used to determine the sources of bacteria pollution in a waterbody. Two distinctly different approaches are watershed modeling and bacterial source tracking (BST). Watershed modeling begins on the land, identifying potential sources based on information about conditions in the watershed (e.g. numbers of residents, estimated wildlife populations, estimated of livestock, etc.). BST begins in the water, identifying sources of fecal coliforms, specifically the dominant fecal coliform *Escherichia coli*, to shellfish waters based on either genetic or phenotypic characteristics of the coliforms. Virginia’s Department of Environmental Quality has decided to utilize BST, and specifically to use a method called antibiotic resistance analysis (ARA). This method assumes that fecal bacteria found in four sources: humans, wildlife, livestock, and domestic animals

will all differ in their reactions to antibiotics. Thus, when samples of fecal bacteria collected in the water quality monitoring program are exposed to specific antibiotics the pattern of responses allows matching similarities to the response patterns of bacteria from known sources which have been accumulated in a “source library”. Through this analysis investigators also estimate the relative proportion of the fecal bacteria derived from each of the four general source classes and assumes this proportion reflects the relative contribution from the watershed..

The resulting estimates of the amount of fecal coliform pollution coming from each type of source can then be used to allocate reductions necessary to meet the water quality standard for shellfish growing waters. Identifying and agreeing on the means to achieve these reductions represent the TMDL implementation plan.

Continued water quality monitoring will tell whether the efforts to control sources of fecal coliforms in the watershed have succeeded.

Bacteria Impairments

This document details the development of bacterial TMDLs for eleven shellfish condemnation areas and three recreation use impairments in the Back River watershed. These impairments are identified as shellfish condemnation number 158, Long and Grunland Creeks (VAT-C07E-13); shellfish condemnation 193, Front Cove (VAT-C07E-12); shellfish condemnation 21A, Topping Creek (VAT-C07E-17); shellfish condemnation 21-B, Cedar Creek(VAT-C07E-18); shellfish condemnation 21-C, Northwest Branch Back River (VAT-C07E-21); shellfish condemnation 21-D, Tabbs Creek (VAT-C07E-19); shellfish condemnation 21-E , Southwest Branch Back River (VAT-C07E-22); shellfish condemnation 21-F, Inlet#1 (VAT-C07E-15); shellfish condemnation 21-G, Harris River (VAT-C07E-14); shellfish condemnation 21-H, Inlet (VAT-C07E-20); and shellfish condemnation 21-H, Wallace Creek (VAT-C07E-16). The applicable state standard specifies that the number of fecal coliform bacteria shall not exceed a maximum allowable level of geometric mean of 14 most probable number (3-tube MPN) per 100 milliliters (ml) and a 90th percentile geometric mean value of 49 MPN/100ml for a contiguous 30 month period (Virginia Water Quality Standard 9-VAC 25-260-5). In development of the shellfish portion of this TMDL, the 90th percentile 49 MPN/100 ml was used, since it represented the more stringent standard.

The recreation use impairments for fecal coliform bacteria and *enterococci* are identified as Brick Kiln Creek (VAT-C07E-01) in the upper reaches of the Northwest Branch of Back River, and two segments of New Market Creek (VAT-C07E-02 and VAT-C07E-03) in the upper reaches of the Southwest Branch of Back River. All three recreation impairments overlie shellfish impairments. The applicable *enterococci* standard is a single sample concentration of 104 colony forming units ((CFU) per 100 milliliters of sample. The fecal coliform standard for recreation use does not apply in theses waters as there are sufficient *enterococci* samples, defined as a total of 12 samples or more, to provide adequate data. The shellfish fecal coliform standard also applies in these waters but results in a lower reduction than the *enterococci* standard. Therefore reduction targets set by the *enterococci* limits apply for implementation purposes in these segments.

Sources of Bacteria

Potential sources of fecal coliform consist primarily of non-point source contributions, as there are no permitted point source discharges in the watershed. Non-point sources include wildlife; livestock; land application of bio-solids; recreational vessel discharges; failed, malfunctioning, or non-operational septic systems, and uncontrolled discharges (straight pipes conveying gray water from kitchen and laundry areas of private homes, etc.).

Water Quality Modeling

A steady state tidal prism model was used for this TMDL study because the character of the waterbodies to be modeled is relatively simple from a hydrologic perspective: for example, small in area and volume with a single, unrestricted connection to receiving waters. This approach uses the volume of the waterbody and adjusts for tidal flushing, freshwater inflow and bacterial decay in order to establish the existing and allocation conditions.

Determination of Existing Loadings

To assist in partitioning the loads from the diverse sources within the watershed, water quality samples of fecal coliform bacteria were collected for one year and evaluated using an antibiotic resistance analysis in a process called bacterial source tracking. These samples were compared to a reference library of fecal samples from known sources. The resulting data were used to assign portions of the load within the watershed to wildlife, humans, pets or livestock. The results of this analysis indicated that the primary source of fecal coliforms is wildlife with livestock as secondary contributors. The presence of a large signature attributable to one component is sufficient to establish potential directions for remediation under a future implementation plan.

Bacteria Allocation

The next step in the TMDL process was to determine the appropriate water quality standard to be applied. This was set as the 90th percentile standard for all but the *enterococci* impaired waters because the data established that the 90th percentile required the greater reduction. Calculated results of the model for each segment were used to establish the existing load in the system. The load necessary to meet water quality standards was calculated in a similar fashion using the water quality standard criterion in place of the ambient water quality value. The difference between these two numbers represents the necessary level of reduction in each segment.

The results of the BST developed for each segment were used to partition the load allocation that would meet water quality standards according to source. The results of the model, the BST source partitioning and the reductions necessary for each segment are shown in the tables at the end of this summary.

Finally, the contribution of the total allocation in each sub-watershed derived from the storm water system was determined using a weighted average approach based upon impervious area. Wetlands and other waters in the system were factored out of the storm water waste load allocation.

Margin of Safety

In order to account for uncertainty in modeled output, a margin of safety (MOS) was incorporated into the TMDL development process by making very conservative choices. A margin of safety can be incorporated implicitly in the model through the use of conservative estimates of model parameters, or explicitly as an additional load reduction requirement. Individual errors in model inputs, such as data used for developing model parameters, may affect the load allocations in a positive or a negative way. The purpose of the MOS is to avoid an overall bias toward load allocations that are too large for meeting the water quality target. An implicit MOS was used in the development of this bacteria TMDL through selection of a water quality standard providing the highest available level of protection, utilization of entire segment volumes for model calculations, using maximum *enterococci* values and emphasizing watershed-based implementation measures.

Recommendations for TMDL Implementation

The goal of this TMDL was to develop an allocation plan that achieves water quality standards during the implementation phase. Virginia's 1997 Water Quality Monitoring, Information and Restoration Act states in section 62.1-44.19.7 that the "Board shall develop and implement a plan to achieve fully supporting status for impaired waters".

The TMDL developed for the Back River watershed impairments provides allocation scenarios that will be a starting point for developing implementation strategies. Additional monitoring aimed at targeting the necessary reductions is critical to implementation development. Once established, continued monitoring will aid in tracking success toward meeting water quality milestones.

Public participation is critical to the implementation process. Reductions in non-point source loading is the crucial factor in addressing the problem. These sources cannot be addressed without public understanding of and support for the implementation process. Stakeholder input will be critical from the onset of the implementation process in order to develop an implementation plan that will be truly effective.

Public Participation

During development of the TMDL for the Back River watershed, public involvement was encouraged through a public participation process that included public meetings and stakeholder meetings. The first public meeting was held on September 14, 2005. A basic description of the TMDL process and the agencies involved was presented and a discussion was held regarding the source assessment input, bacterial source tracking, and model results. This meeting was followed by development of the final draft TMDL and a review by the stakeholders. These comments were discussed at a meeting comprised local government representatives, the Hampton Roads Planning District Commission, and state agency representatives on November 21, 2005.

Input from these meetings was utilized in the development of the TMDL and improved confidence in the allocation scenarios and TMDL process.

The second public meeting was held on March 23, 2006. The results of the TMDL study were presented and discussed

TMDL Summary for Shellfish Closures in the Back River Watershed (geo mean)

Condemnation Area	Pollutant Identified	Total TMDL Allocation MPN/day	Waste Load Allocation MPN/day	Load Allocation MPN/day	Margin of Safety
54-21A Topping Creek	Fecal Bacteria	7.45E+09	4.47E+08	7.00E+09	Implicit
54-21B Cedar Creek	Fecal Bacteria	4.57E+09	2.74E+08	4.30E+09	Implicit
54-21C NW Branch Back River	Fecal Bacteria	2.47E+10	3.46E+09	2.12E+10	Implicit
54-21D Tabbs Creek	Fecal Bacteria	2.55E+20	4.84E+19	2.06E+20	Implicit
54-21E SW Branch Back River	Fecal Bacteria	3.23E+11	1.00E+11	2.23E+11	Implicit
54-21F Inlet #1	Fecal Bacteria	1.81E+09	2.53E+08	1.56E+09	Implicit
54-21G Harris River	Fecal Bacteria	7.03E+10	9.84E+09	6.05E+10	Implicit
54-21H Inlet#2	Fecal Bacteria	8.32E+08	9.98E+07	7.32E+08	Implicit
54-21H Wallace Creek	Fecal Bacteria	5.76E+09	6.91E+08	5.07E+09	Implicit
54-193A Front Cove	Fecal Bacteria	4.56E+09	5.02E+08	4.06E+09	Implicit
54-158 Long and Grunland Creek	Fecal Bacteria	1.77E+10	2.30E+09	1.54E+10	Implicit

TMDL Summary for Shellfish Closures in the Back River Watershed (90th percentile)

Condemnation Area	Pollutant Identified	Total TMDL Allocation MPN/day	Waste Load Allocation MPN/day	Load Allocation MPN/day	Margin of Safety
54-20A Topping Creek	Fecal Bacteria	2.61E+10	1.56E+09	2.45E+10	Implicit
54-20B Cedar Creek	Fecal Bacteria	1.60E+10	9.60E+08	1.50E+10	Implicit

TMDL Summary for Shellfish Closures in the Back River Watershed (90th percentile)

Condemnation Area	Pollutant Identified	Total TMDL Allocation MPN/day	Waste Load Allocation MPN/day	Load Allocation MPN/day	Margin of Safety
54-21C NW Branch Back River	Fecal Bacteria	8.69E+10	1.21E+10	7.43E+10	Implicit
54-21D Tabbs Creek	Fecal Bacteria	2.54E+10	4.84E+09	2.06E+10	Implicit
54-21E SW Branch Back River	Fecal Bacteria	1.13E+12	3.51E+11	7.81E+11	Implicit
54-21F Inlet #1	Fecal Bacteria	6.34E+09	8.88E+08	5.46E+09	Implicit
54-21G Harris River	Fecal Bacteria	2.45E+11	3.44E+10	2.11E+11	Implicit
54-21H Inlet#2	Fecal Bacteria	2.91E+09	3.49E+08	2.56E+09	Implicit
54-21H Wallace Creek	Fecal Bacteria	2.02E+10	2.42E+09	1.77E+10	Implicit
54-193A Front Cove	Fecal Bacteria	1.6E+10	1.76E+09	1.42E+10	Implicit
54-158 Long and Grunland Creek	Fecal Bacteria	6.21E+10	8.07E+09	5.40E+10	Implicit

TMDL Summary for Recreation Use Impairments in the Back River Watershed.

Condemnation Area	Pollutant Identified	Total TMDL Allocation MPN/day	Waste Load Allocation MPN/day	Load Allocation MPN/day	Margin of Safety
VAT-C07E-01 Brick Kiln Creek and NW Branch Back River	<i>Enterococci</i>	2.40E+12	3.36E+11	2.06E+12	Implicit
(same as VAT-C07E-21)	Fecal Coliform*	8.69E+10	1.21E+10	7.43E+10	Implicit
VAT-C07E-02 & VAT-C07E-03 New Market Creek 1 and 2 and SW Branch Back River	<i>Enterococci</i>	1.13E+12	3.51E+11	7.81E+11	Implicit
Same as VAT-C07E-22	Fecal Coliform*	1.13E+12	1.13E+12	3.50E+11	Implicit

1.0 Introduction

This document details the development of bacterial Total Maximum Daily Loads (TMDL) for fourteen segments in the Back River watershed in York County and the Cities of Poquoson and Hampton, Virginia which are listed as impaired on Virginia's 303(d) Total Maximum Daily Load Priority List. The TMDL is one step in a multi-step process that includes a high level of public participation in order to address water quality issues that can affect public health and the health of aquatic life.

1.1 Listing of Water Bodies under the Clean Water Act

Water quality standards are regulations based on federal or state law that set numeric or narrative limits on pollutants. Water quality monitoring is performed to measure these pollutants and determine if the measured levels are within the bounds of the limits set for the uses designated for the waterbody. The waterbodies which have pollutant levels above the designated standards are considered impaired for the corresponding designated use (e.g. swimming, drinking, shellfish harvest, etc.). The impaired waterways are listed on the §303 (d) list reported to the Environmental Protection Agency. Those waters placed on the list require the development of a TMDL intended to eliminate the impairment and bring the water into compliance with the designated standards.

TMDLs represent the total pollutant loading that a water body can receive without violating water quality standards. The TMDL process establishes the allowable loading of pollutants for a water body based on the relationship between pollution sources and in-stream water quality conditions. By following the TMDL process, states can establish water quality based controls to reduce pollution from both point and non-point sources to restore and maintain the quality of their water resources (EPA, 1991).

Fecal coliform bacteria are the most common cause for the impairments in Virginia shellfish growing waters. This group of bacteria is considered an indicator of the presence of fecal contamination. The most common member of the fecal coliform groups is *Escherichia coli*. Fecal coliforms are associated with the fecal material derived from humans and warm-blooded animals. The presence of fecal coliform bacteria in aquatic environments is an indication that the water may have been contaminated by pathogens or disease-producing bacteria or viruses. Waterborne pathogenic diseases include typhoid fever, viral and bacterial gastroenteritis, and hepatitis A. Filter-feeding shellfish can concentrate these pathogens which can be transmitted and cause disease when eaten uncooked. Therefore, the presence of elevated numbers of fecal coliform bacteria is an indicator that a potential health risk exists for individuals consuming raw shellfish. Fecal contamination can occur from point source inputs of domestic sewage or from nonpoint sources of human, (e.g., malfunctioning septic systems) or animal wastes.

Because the fecal coliform indicator does not provide information on the source or origin of fecal contamination, Agencies of the Commonwealth, including the Department of Environmental Quality (DEQ), the Virginia Department of Health – Division of Shellfish sanitation (VDH-DSS) and the

Department of Conservation and Recreation (DCR) have worked together with state universities, the U.S. Geological Survey and the U.S. Environmental Protection Agency to develop methods to assess sources of fecal coliforms to assist in development of TMDLs in impaired shellfish waters.

As a group these methods are usually called bacterial or microbial source tracking (BST or MST). This study utilizes bacteria source tracking (BST) to determine the most probable sources of fecal coliform in the water.

To assist with the analysis and development of the TMDLs for impaired shellfish waters, the Department of Environmental Quality has contracted the Virginia Institute of Marine Science (VIMS).

1.2 Overview of the TMDL Development Process

A TMDL study for estuarine and shellfish waters is the first part of a phased process aimed at restoring water quality. This study is designed to determine how much of the pollutant input needs to be reduced in order to achieve water quality standards. The second step in the process is the development of an implementation plan that identifies which specific control measures are necessary to achieve those reductions, their timing for implementation and at what cost. The implementation plan will also outline potential funding sources. The third step will be the actual implementation process. Implementation will typically occur in stages that allow a review of progress in reducing pollutant input, refine bacteria loading estimates based upon additional data and to make any identified changes to pollutant control measures.

The TMDL development process also must account for seasonal and annual variations in precipitation, flow, land use, and pollutant contributions. Such an approach ensures that TMDLs, when implemented, do not result in violations under a wide variety of scenarios that affect bacterial loading.

2.0 Applicable Water Quality Standards

Water quality standards are provisions of state or federal law which consist of a designated use or set of uses for the waters and water quality criteria based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia) and the federal Clean Water Act (33 USC §1251 et seq.). According to Virginia Water Quality Standards (9 VAC 25-260-5), the term

“water quality standards means provisions of state or federal law which consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based upon such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water and serve the purposes of the State Water Control Law (§62.1-44.2 et seq. of the Code of Virginia) and the federal Clean Water Act (33 USC §1251 et seq.).”

The Water Quality Standard for recreation use in non-shellfish waters under 9 VAC 25-260-170 is as follows:

“A. In surface waters, except shellfish waters and certain waters identified in subsections B and C of this section, the following criteria shall apply to protect primary contact recreational uses:

1. Fecal coliform bacteria shall not exceed a geometric mean of 200 fecal coliform bacteria per 100 ml of water for two or more samples over a calendar month nor shall more than 10% of the total samples taken during any calendar month exceed 400 fecal coliform bacteria per 100 ml of water. This criterion shall not apply for a sampling station after the bacterial indicators described in subdivision 2 of this subsection have a minimum of 12 data points or after June 30, 2008, whichever comes first.

2. E. coli and enterococci bacteria per 100 ml of water shall not exceed the following:

	<u>Geometric Mean¹</u>	<u>Single Sample Maximum²</u>
<u>Freshwater³</u>		
<i>E.coli</i>	126	235
<u>Saltwater and Transition Zone³</u>		
<i>enterococci</i>	35	104

¹ *For two or more samples taken during any calendar month.*

² *No single sample maximum for enterococci and E. coli shall exceed a 75% upper one-sided confidence limit based on a site-specific log standard deviation. If site data are insufficient to establish a site-specific log standard deviation, then 0.4 shall be used as the log standard deviation in freshwater and 0.7 shall be as the log standard deviation in saltwater and transition zone. Values shown are based on a log standard deviation of 0.4 in freshwater and 0.7 in saltwater.*

³ *See 9 VAC 25-260-140 C for freshwater and transition zone delineation.”*

It should be noted that the saltwater recreation standard also applies in shellfish waters.

2.1 Designated Uses and Criteria

Generally, all tidal waters in Virginia are designated as shellfish waters. The identification of the applicable river reaches can be found in the river basin tables at 9VAC25-260-390 et seq. For a shellfish supporting water body to be in compliance with Virginia bacterial standards, VADEQ specifies the following criteria (9 VAC 25-260-160):

“In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, and including those waters on which condemnation or restriction classifications are established by the State Department of Health the following criteria

for fecal coliform bacteria shall apply; The geometric mean fecal coliform value for a sampling station shall not exceed an MPN (most probable number) of 14 per 100 milliliters. The 90th percentile shall not exceed an MPN of 43 for a 5 tube, 3 dilution test or 49 for a 3 tube, 3 dilution test.”

2.2 Classification of Virginia’s Shellfish Growing Areas

The Virginia Department of Health, Division of Shellfish Sanitation (DSS) is responsible for classifying shellfish waters and protecting the health of bivalve shellfish consumers. The VDH- DSS follows the requirements of the National Shellfish Sanitation Program (NSSP), which is regulated by the U.S. Food and Drug Administration. The NSSP specifies the use of a shoreline survey as its primary tool for classifying shellfish growing waters. Fecal coliform concentrations in water samples collected in the immediate vicinity of the shellfish beds function to verify the findings of the shoreline survey, and to define the border between approved and condemned (unapproved) waters. Much of the DSS effort is focused on locating fecal contamination, and in this manner minimizing the introduction of human pathogens to shellfish waters.

DSS designs and operates the shoreline survey to locate sources of pollution within the watersheds of shellfish growing areas. This is accomplished through a property-by-property inspection of the onsite sanitary waste disposal facilities of most properties on un-sewered sections of watersheds, and investigations of other sources of pollution such as wastewater treatment plants (WTP), marinas, livestock operations, landfills, etc. The information is compiled into a written report with a map showing the location of the sources of real or potential pollution found and sent to the various agencies that are responsible for regulating these concerns in the city or county. Once an onsite problem is identified, local health departments (LHDs), and/or other state and local agencies may play a role in the process of correcting the deficiencies.

The VDH-DSS collects monthly seawater samples at over 2,000 stations in the shellfish growing areas of Virginia. Though they continuously monitor sample data for unusual events, they formally evaluate shellfish growing areas on an annual basis. The annual review uses data from the most recent 30 samples (i.e.30 months), collected randomly with respect to weather. The data are assessed to determine whether the water quality standards are met. If the water quality standards are exceeded, the shellfish area is closed for the harvest of shellfish that go directly to market. Those areas that marginally exceed the water quality standard and are closed for the direct marketing of shellfish are eligible for harvest of shellfish under permit from the Virginia Marine Resources Commission and VDH-DSS. The permit establishes controls that in part require shellfish be allowed to depurate for 15 days in clean growing areas or specially designed licensed on shore facilities. Shellfish in growing areas that may be highly polluted, such as those in the immediate vicinity of a wastewater treatment facility (prohibited waters), are not allowed to be moved to clean waters for self purification.

3.0 Watershed Characterization

The Back River watershed is bordered by the City of Poquoson, City of Hampton and York County. The eleven shellfish condemnation areas in the watershed are condemnation number 158: Long and Grunland Creeks (VAT-C07E-13), condemnation 193A: Front Cove (VAT-C07E-12), condemnation 21A: Topping Creek (VAT-C07E-17), condemnation 21-B Cedar Creek (VAT-C07E-18), condemnation 21-C: Northwest Branch Back River (VAT-C07E-21), condemnation 21-D: Tabbs Creek (VAT-C07E-19), condemnation 21-E: Southwest Branch Back River (VAT-C07E-22), condemnation 21-F: Inlet #1 (VAT-C07E-15), condemnation 21G : Harris River (VAT-C07E-15), condemnation 21-H: Inlet #2 (VAT-C07E-20), and condemnation 21-H: Wallace Creek (VAT-C07E-16). The condemnation notices for these waterbodies can be found in Appendix A.

The applicable state standard specifies that the number of fecal coliform bacteria shall not exceed a maximum allowable level of geometric mean of 14 most probable number (3-tube MPN) per 100 milliliters (ml) and a 90th percentile geometric mean value of 49 MPN/100ml. (Virginia Water Quality Standard 9-VAC 25-260-5). In development of the shellfish portion of this TMDL, the 90th percentile 49 MPN/100 ml was used, since based upon analysis of the data it represented the more stringent standard in terms of required reductions most of the sub-watersheds.

The recreation use impairments for fecal coliform bacteria and *enterococci* are identified as Brick Kiln Creek (VAT-C07E-01) in the upper reaches of the Northwest Branch of Back River (VAT-C07E-21), and two segments of New Market Creek (VAT-C07E-02 and VAT-C07E-03) in the upper reaches of the Southwest Branch of Back River (VAT-C07E-22). All three recreation impairments overlie their corresponding shellfish impairments. The applicable *enterococci* standard is a single sample concentration of 104 colony forming units ((CFU) per 100 milliliters of sample. The fecal coliform standard for recreation use does not apply in these waters as there are sufficient *enterococci* samples, defined as a total of 12 samples or more, to provide adequate data. The shellfish fecal coliform standard also applies in these waters but results in a lower reduction than the *enterococci* standard. Therefore reduction targets set by the *enterococci* limits apply for implementation purposes in these segments.

The watershed occupies a landscape position along the northeastern tip of the peninsula formed between the James River on the south and the York River and Chesapeake Bay on the North. The watershed drains north east to the Chesapeake Bay (Figure 3.0). The watershed is bounded on the west by state route 171 and Interstate 74 on the north by route 171, on the east and northeast by the Plum Tree Island National Wildlife Refuge and the Chesapeake Bay and on the south by Interstate 64. The Cities of Poquoson and Hampton , as well as suburban York County are located within the watershed. The Langley Air Force Base occupies a central landscape position in the watershed.

The drainage area of the Back River watershed is approximately 54.3 square miles. Population estimated by the 2000 US Census is 128,452.

A map of the land use in the watershed is shown in Figure 3-1. Approximately 41 % of the land use in the watershed is developed for urban or commercial use(See Figure 3-2). As the land use area within the watershed is based upon surface area, the 15% water reflects that portion of the watershed area occupied by the Back River and its tributaries River. Forest occupies 23% of the land surface and

agriculture occupies about 6%. Estimations of the populations of livestock and wildlife, as well as numbers of septic systems within the watershed are shown in Table 3-1. Appendix B: Supporting Documentation and Watershed Assessment, provides a description of data and list of data sources for Table 3-1.

**Table 3-1 Animal Populations and Septic Systems
Growing Area 54***

Animal Population Type	21A Toppin g Creek	21B Cedar Creek	21C N.W. Back River	21D Tabbs Creek	21E S.W. Back River	21F Inlet #1	21G Harris River	21H Inlet #2 (Added in 2004)	21H Wallace Creek	193 Front Cove	158 Long & Grun-land Creek
Duck	247	247	603	141	623	57	231	N/A	224	263	708
Cattle	1	0	6	0	0	0	0	0	0	0	0
Dog	1592	1592	12611	5020	12470	454	1570	N/A	6584	731	8108
Septic	915	915	15587	4327	21499	850	2707	N/A	3203	631	3928
Raccoon	134	134	747	89	407	13	87	N/A	131	144	343
Chicken	0	0	4	0	0	0	0	0	0	0	0
Deer	140	140	589	83	149	14	41	N/A	58	100	145
Geese	171	171	416	97	430	43	159	N/A	155	182	489
Horse	0	1	5	0	0	0	0	0	0	0	0

* estimates based upon land area and extrapolated countywide data. N/A means data was not available for this watershed.

4.0 Water Quality Impairment and Bacterial Source Assessment

4.1 Water Quality Monitoring

The water quality monitoring network consists of 56 monitoring stations. These stations are monitored by the VDH-DSS for fecal bacteria. The locations of the water quality monitoring stations are shown in Figure 4.1. This TMDL study examined bacterial monitoring data at these stations for a period of time from September 2000 through February 2003. A summary of historic water quality data for the monitoring period of record is shown in Table 4.1. Graphs depicting the geometric mean and 90th percentile for the period of this TMDL report are shown in Figures 4.3A and 4.3B. In Table 4.1, a station outside the closure area(s) that shows a maximum value for either the geometric mean, 90th percentile, or both that exceeds the standard, may be due to the inclusion of data collected after 1998. This may provide an indication of water quality issues in the watershed since the time of the 1998 impaired waters listing of areas in this watershed. Only data for those stations associated with a

Figure 3.0

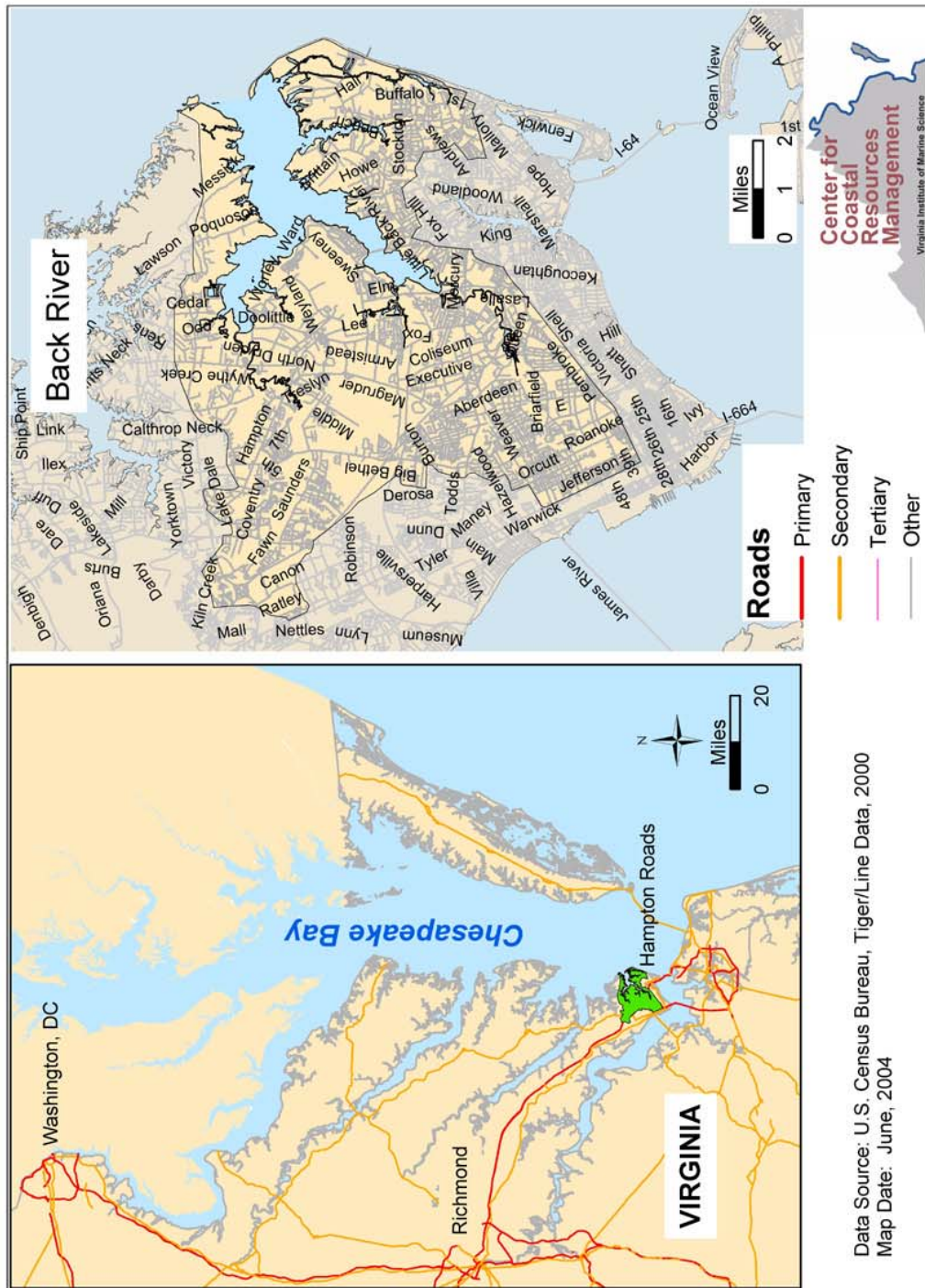
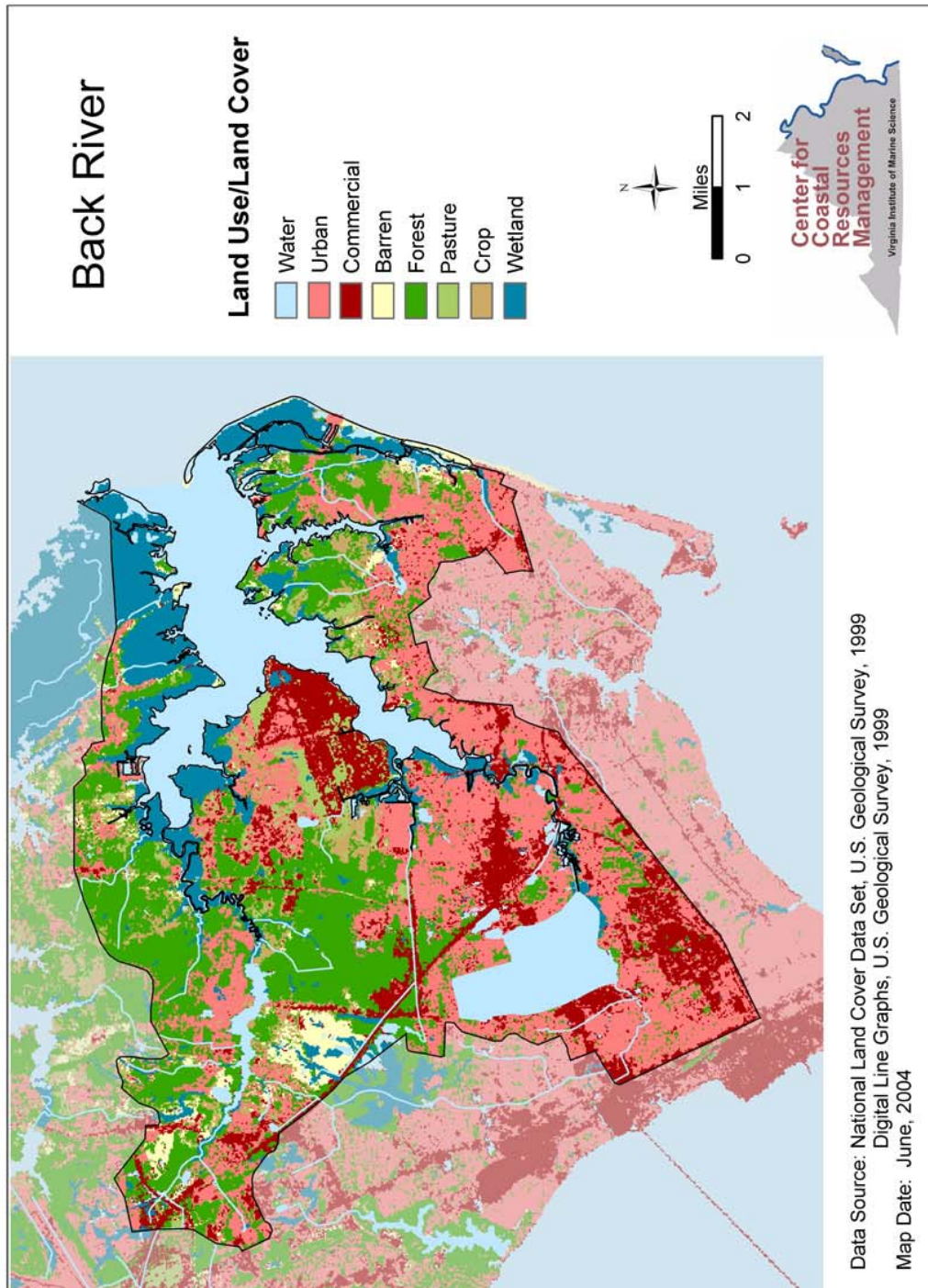


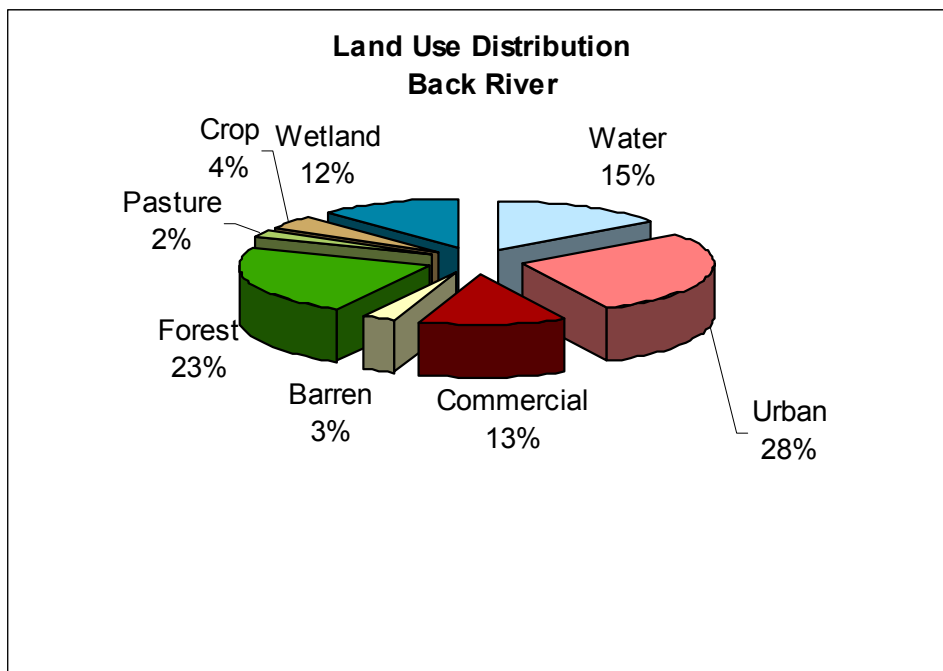
Figure 3.1



condemnation from 1998, as indicated by a condemnation number in Table 4.1 are used for the TMDLs in this study. Additionally, it should be noted that the data for the last thirty months as required by the water quality standard for this report include a protracted period of anomalous intensive rainfall lasting more than 18 months. This may make recent data less representative of historic conditions.

The closures in the growing areas are characterized based on all monitoring stations (see Figure 4-1) in the closed area. To facilitate an effective assignment of the appropriate level of protection for this system, the water quality data were averaged across all stations in the condemned area. This treats high and low values equally and provides a target that can be easily comprehended and uniformly implemented while retaining the necessary protection for the affected waters.

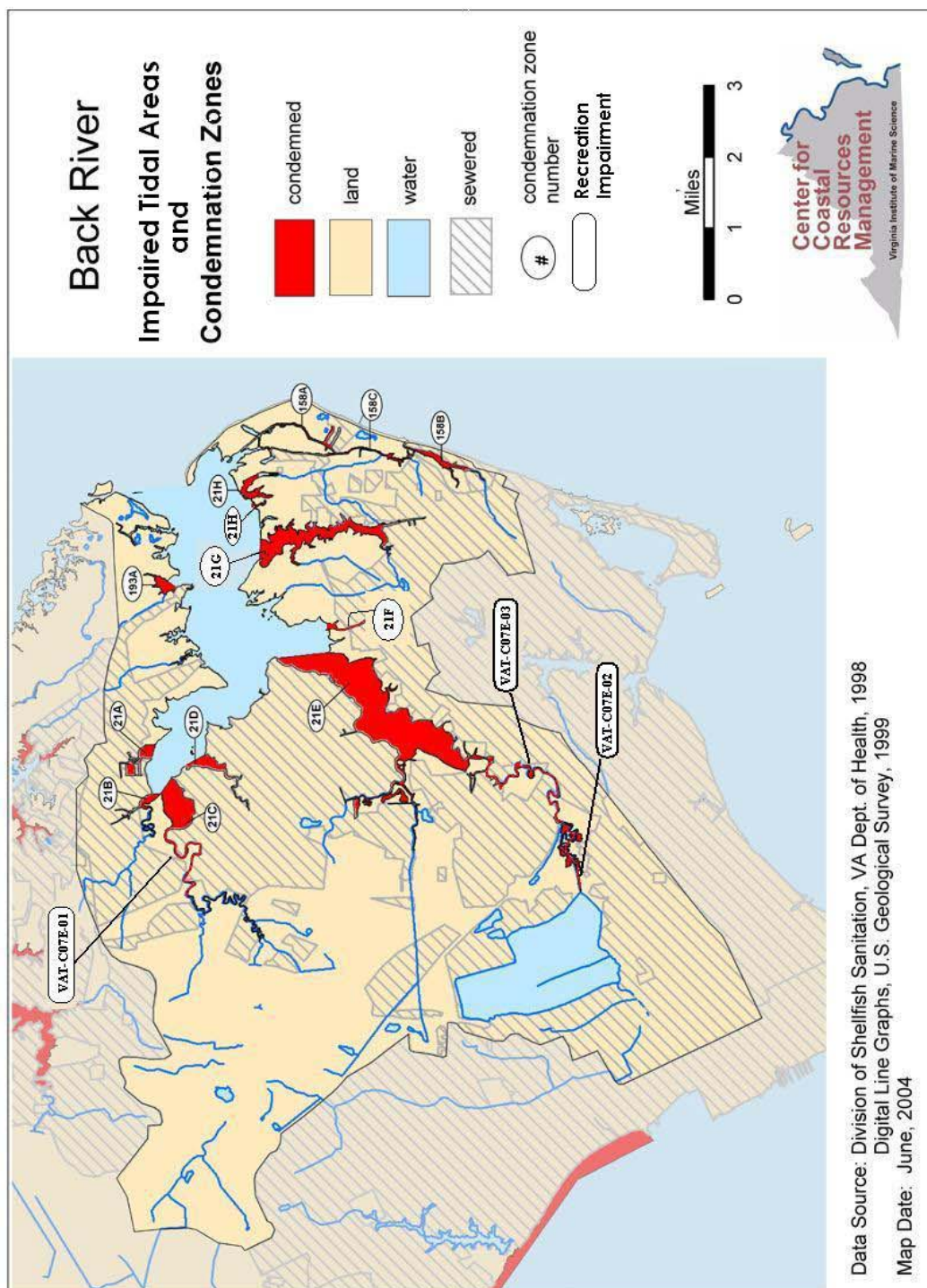
Figure 3-2



10



Figure 4.2



**Table 4-1 Water Quality Data Summary:
Growing Area 54 Back River Watershed
For the Available Data Record (only impaired stations are shown)**

Station	Condemnation Area	Total Observations (over 15 Years)	Geometric Mean	Station Violates Geometric Standard: 14 MPN	90th Percentile	Station Violates 90th Percentile Standard: 49 MPN
54-17A	21A	178	16.8	Yes	119.1	Yes
54-17.2A	21B	154	28.7	Yes	324.9	Yes
54-17.4	21C	119	22.4	Yes	87.3	Yes
54-17.5	21C	113	57.2	Yes	411.9	Yes
54-15Z2	21D	149	25.6	Yes	323.3	Yes
54-15Z3	21D	119	40.1	Yes	382.3	Yes
54-15Z4	21D	95	52.0	Yes	537.7	Yes
54-21	21E	185	17.2	Yes	161.4	Yes
54-21A	21F	35	25.0	Yes	331.8	Yes
54-21B	21F	34	87.1	Yes	816.0	Yes
54-22	21E	182	25.6	Yes	312.3	Yes
54-23	21E	182	25.4	Yes	219.0	Yes
54-24	21E	183	29.0	Yes	239.5	Yes
54-26	21G	183	15.5	Yes	144.6	Yes
54-28	21G	182	15.4	Yes	132.3	Yes
54-29	21G	182	18.8	Yes	216.6	Yes
54-30	21G	181	29.3	Yes	224.6	Yes
54-31	21G	177	50.4	Yes	587.6	Yes
54-34X	21H	177	16.9	Yes	145.2	Yes
54-33V	21H	182	20.9	Yes	176.1	Yes
54-33W	21H	181	16.1	Yes	148.7	Yes
54-33V	21I	182	20.9	Yes	176.1	Yes
54-40	158	180	33.1	Yes	284.8	Yes
54-5B	193	183	15.5	Yes	105.9	Yes

Figure 4.3A

**Back River Watershed:
Growing Area54 Geomean Last 30 Months**

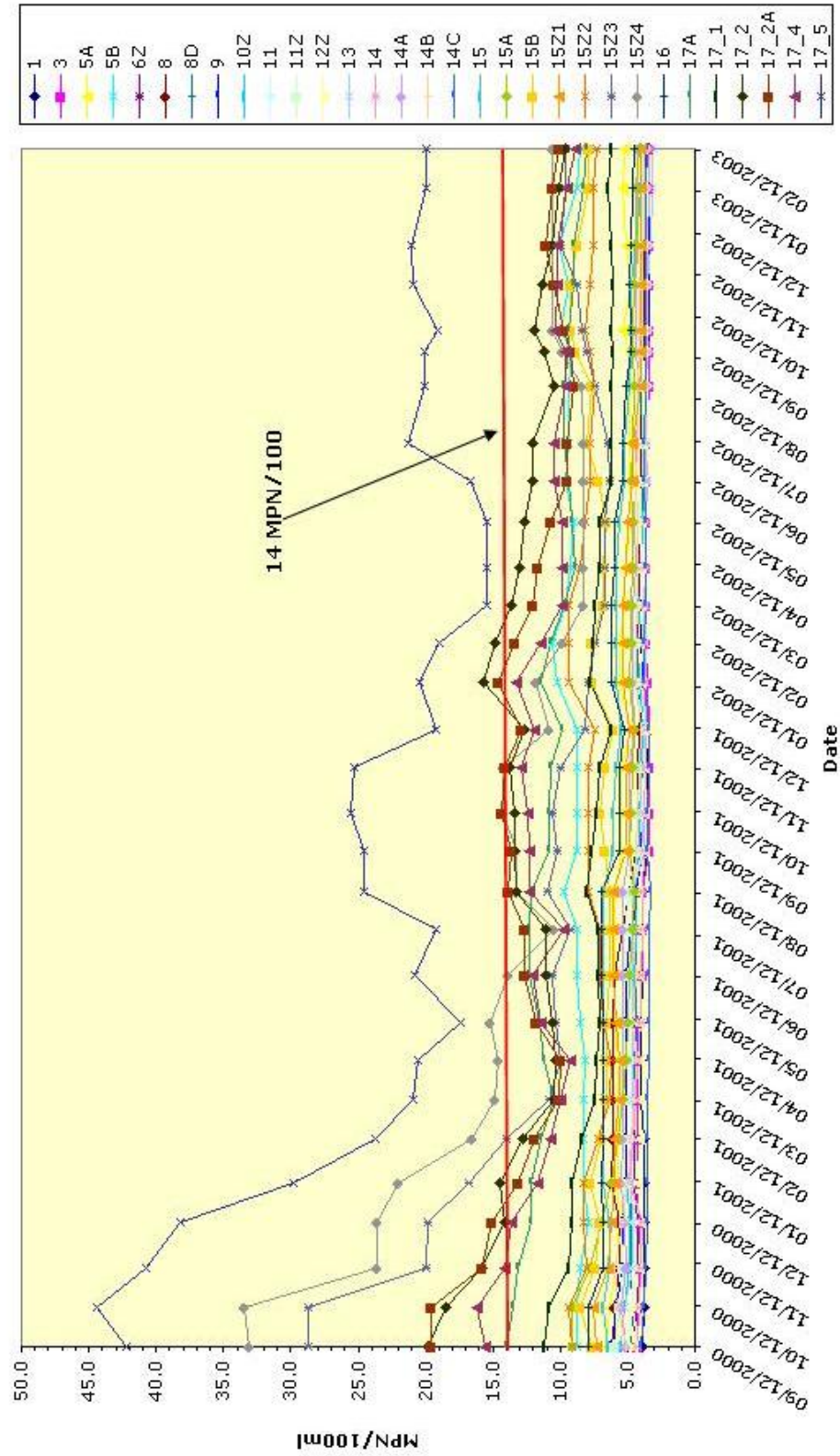
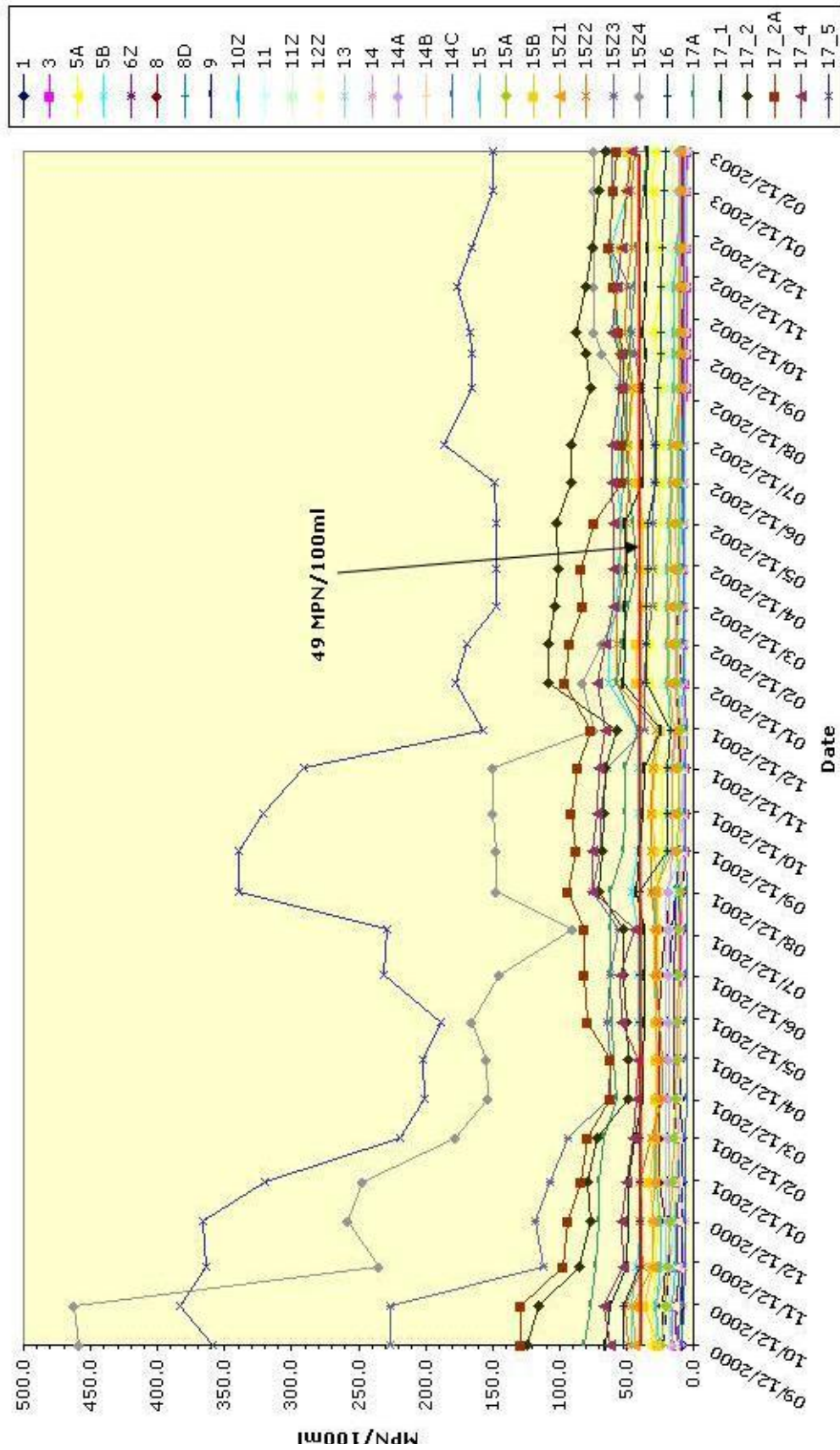


Figure 4.3B

**Back River Watershed
Growing Area 54: 90th Percentile Last 30 Months**



4.2 Impaired Areas

A. Condemnation Areas

Eleven segments for the Back River Watershed were listed as impaired on Virginia's 1998 303(d) water quality standard for fecal coliform bacteria in shellfish supporting waters. Detailed maps of the shellfish condemnation areas and their associated water quality stations are available from the Virginia Department of Health, Division of Shellfish Sanitation. A map of the condemnation areas is shown in Figure 4.2. Copies of the condemnation notices may be found in Appendix A.

B. Recreation Use Impairments

Three segments are listed as impaired for *enterococci* and fecal coliform bacteria for recreation use, each overlies a companion shellfish impairment in the Back River Watershed. These overlapping closures are identified as shellfish impairment 21C (VAT-C07E-21), NW Branch Back River which is overlain by the Brick Kiln Creek recreation impairment (VAT-C07E-01) and shellfish impairment 21E (VAT-C07E-22), SW Branch Back River which is overlain by two non-contiguous recreation impairments of New Market Creek (VAT-C07E-02 and VAT-C07E-03).

4.3 Fecal Coliform Bacteria Source Assessment

The locations of shoreline deficiencies from the DSS shoreline survey are shown in Figure 4.4.

A. Point Source

There are no VPDES permitted wastewater treatment plant point source contributions to affected shellfish waters within the watershed. There are VPDES permitted discharges that are the result of the extensive storm water system from the Cities of Hampton and Poquoson and from York County. The City of Poquoson and York County are Phase II, major storm water collection systems covered under VPDES permit number VAR040028 for York County and VAR040024 for the City of Poquoson. The City of Hampton has a Phase I storm water general permit number VA0088633. The National Aeronautics and Space Administration (NASA) research facility near Langley Air Force Base has an industrial storm water permit numbered VAR040092, and Langley Air Force Base also has an industrial storm water permit.

B. Non-Point Source Contributions

Nonpoint sources of fecal coliform do not have one discharge point but may occur over the entire length of the receiving water. Fecal coliform bacteria deposited on the land surface can build up over time. During rain events, surface runoff transports water and sediment and discharges to the waterway. Sources of fecal coliform bacteria include grazing livestock, concentrated animal feeding operations, manure application and wildlife and pet excretion. Direct contribution to the waterway occurs when livestock or wildlife defecate into or immediately adjacent to receiving waters. Nonpoint source contributions from humans generally arise from failing septic systems and associated drain fields, moored or marina vessel discharges, storm water management facilities, pump station failures and ex-filtration from sewer systems. Contributions from wildlife, both mammalian and avian,

are natural conditions and may represent a background level of bacterial loading. It is therefore likely that human loading is due to failures in sewer collection systems, septic waste treatment systems and/or potential pollution from recreational vessel discharges.

The shoreline survey is used as a tool to identify nonpoint source contribution problems and locations. Figure 4.4 shows the results of the DSS sanitary shoreline survey dated February, 2000. A copy of the textual portion of this survey has been included as Appendix A. The survey identified 90 deficiencies or potential pollution sources. Forty were on-site sewage deficiencies, 16 were related to boating, 5 were potential pollution, 15 were related to animal pollution 2 were solid waste sites and 12 were listed as industrial waste sites. The remaining deficiencies were related to non-sewage waste. The number of deficiencies displayed on the map may not agree with the total because of the scale of the map and the possibility of multiple deficiencies at one location.

4.4 Bacterial Source Tracking

Bacterial Source tracking is used to identify sources of fecal contamination from human as well as domestic and wild animals. The BST method used in Virginia is based on the premise that *Escherichia coli* (*E. Coli*) found in human, domestic animal, and wild animals will have significantly different patterns of resistance to a variety of antibiotics. The Antibiotic Resistance Approach (ARA), uses fecal streptococcus or *E. coli* and patterns of antibiotic resistance for separation of sources of the bacterial contribution. The BST analysis used for this TMDL classified the bacteria into one of four source categories: human, pets, livestock, and wildlife. However, BST analysis is an experimental, not approved, technique that is under evaluation and the error involved in correctly assigning *E. coli* isolates to the appropriate fecal sources is unknown.

Figure 4.1 shows the TMDL study stations, a subset of these are the BST monitoring stations for the Back River, Growing Area 54. The data developed for the watershed show that the dominant contribution in Topping Creek, Condemnation 21A is human followed by livestock and wildlife. The dominant contribution in Cedar Creek, Condemnation 21B is wildlife followed by human and livestock. The dominant contribution in the northwest branch of Back River, Condemnation 21C is wildlife followed by human and livestock. For Tabbs Creek, condemnation 21D the dominant sources were identified by the BST as livestock and wildlife followed by pets. The Southwest branch of Back River, condemnation 21E, showed wildlife as most dominant followed by livestock and pets. The Harris River, condemnation 21F showed a similar wildlife dominance followed by pets, livestock and human. The Inlet, identified as condemnation 21G was principally dominated by wildlife followed by human and livestock. Wallace Creek, condemnation 21H, was dominated by livestock and human followed closely by the wildlife signature. Front Cove, condemnation 193A was livestock dominated with wildlife and human signatures roughly equal. Long and Grunland Cove located at the easternmost portion of the growing area showed a dominant livestock signature, co-equal wildlife and pet signature and a substantial human signature. Figures 4.5A through J show the mean distribution by month for the source categories and the annual means are shown in Figures 4.6A through J. The BST sampling period was October 2002 through August 2003. The target sampling interval was once monthly, if the graph does not show 11 months, that means that there were months for which data was not available. This data is shown in tabular form in Table 4.2. These values are used for the source allocation in deriving the Total Maximum Daily Loads for the Back River Growing Area.

Figure 4.4

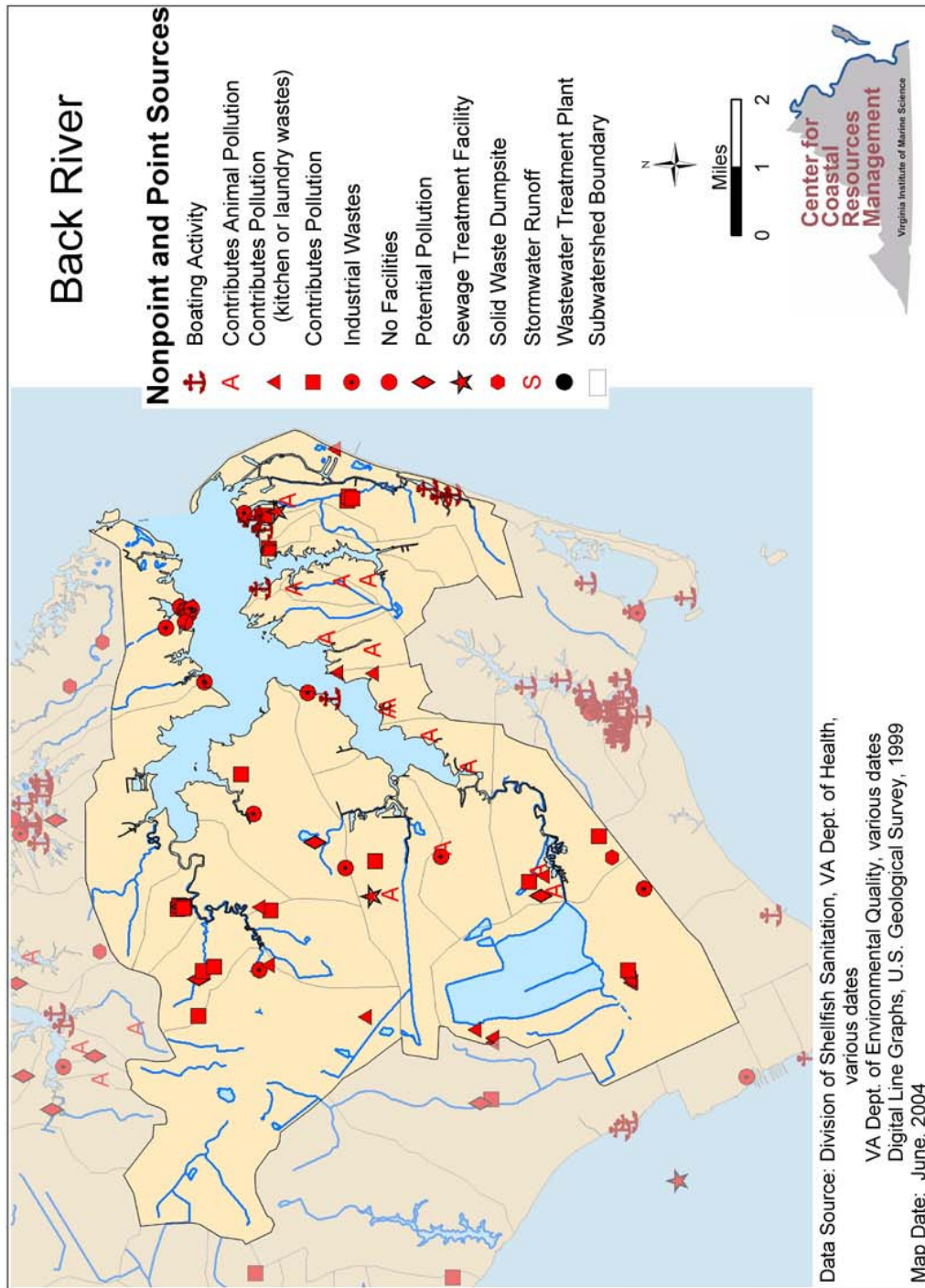


Figure 4.5A

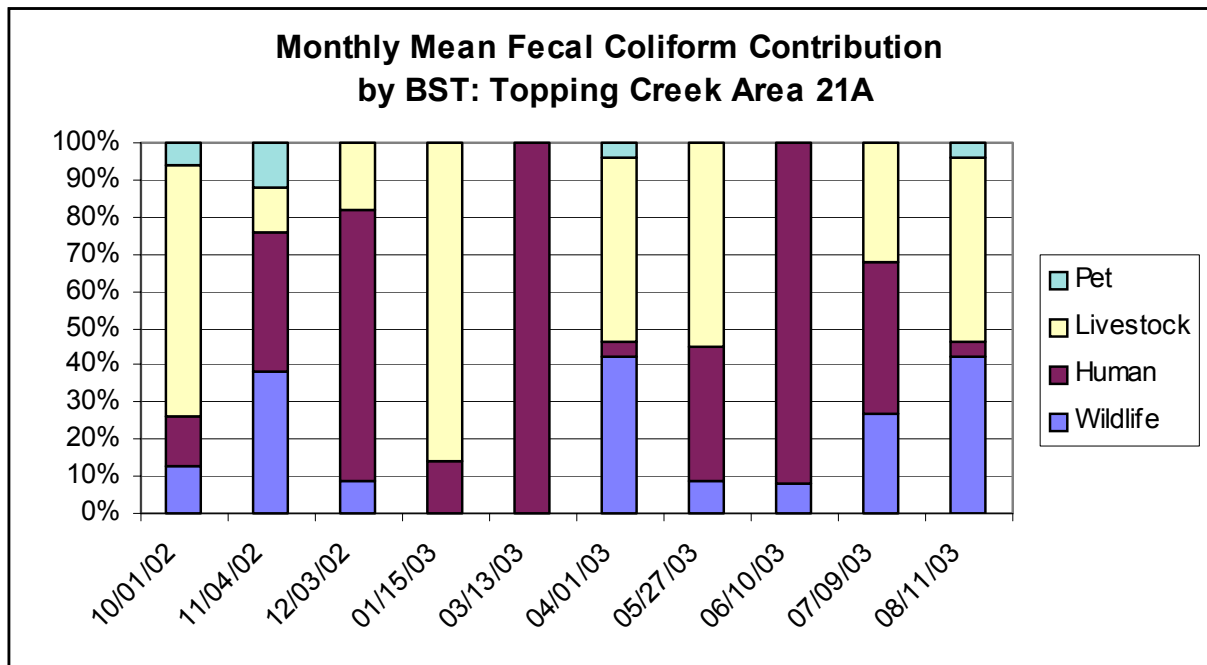


Figure 4.5B

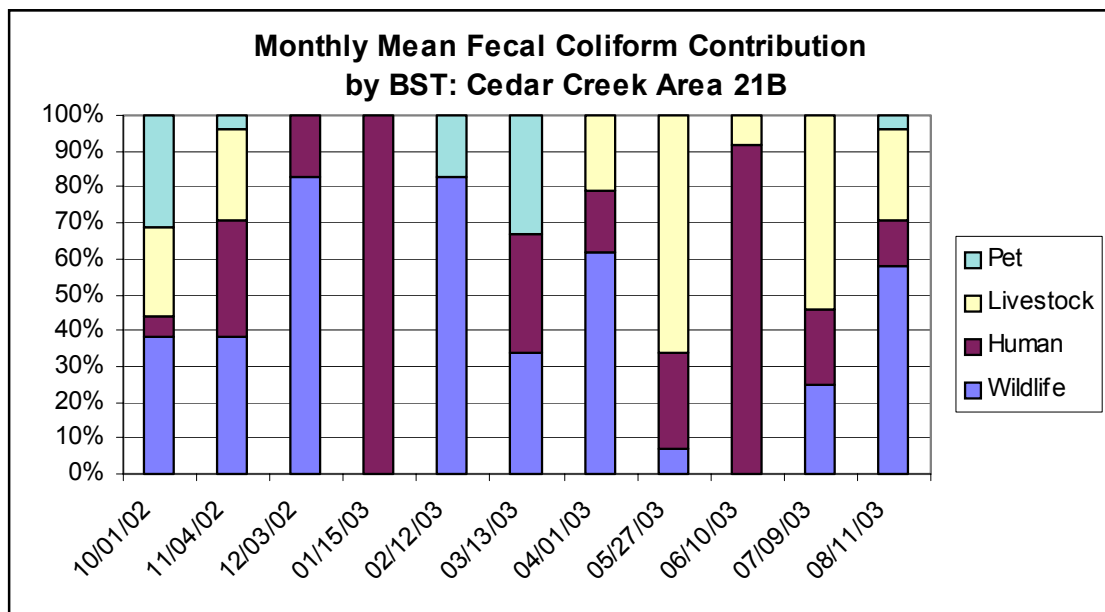


Figure 4.5C

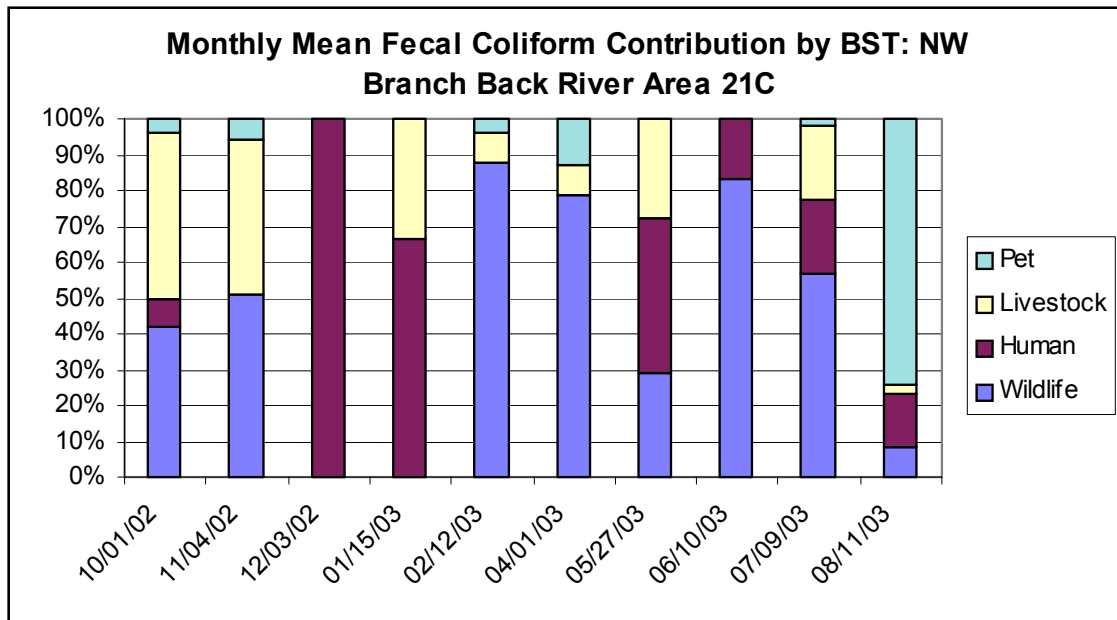


Figure 4.5 D

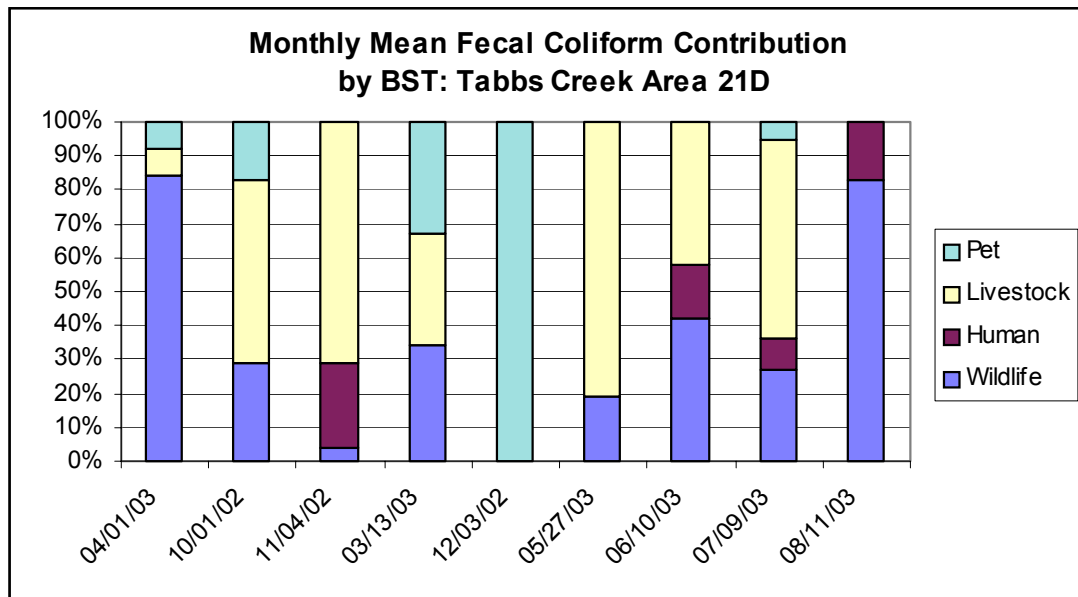


Figure 4.5E

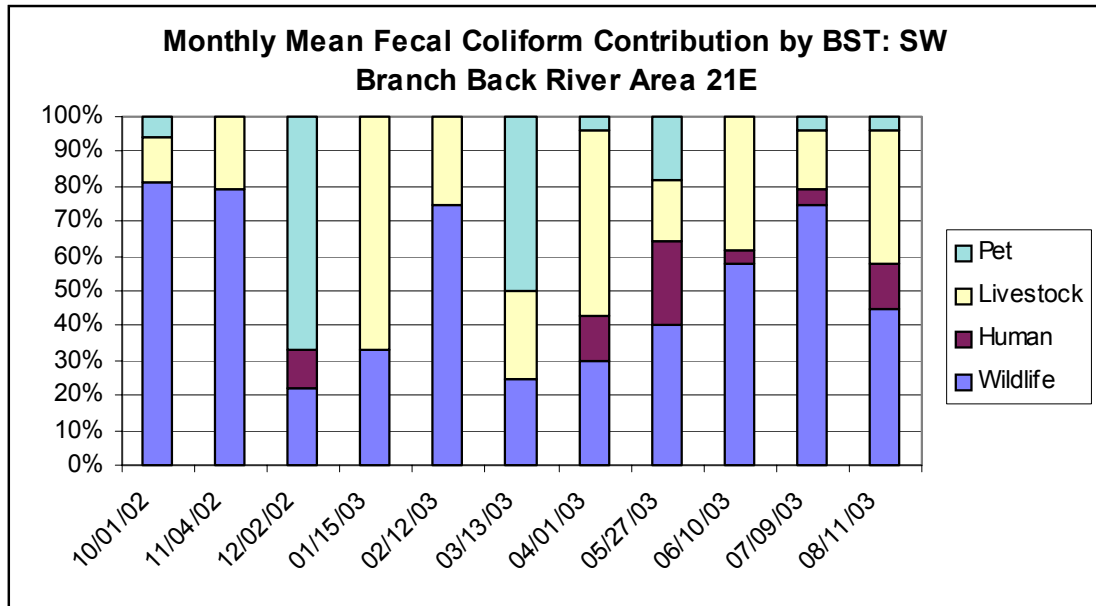
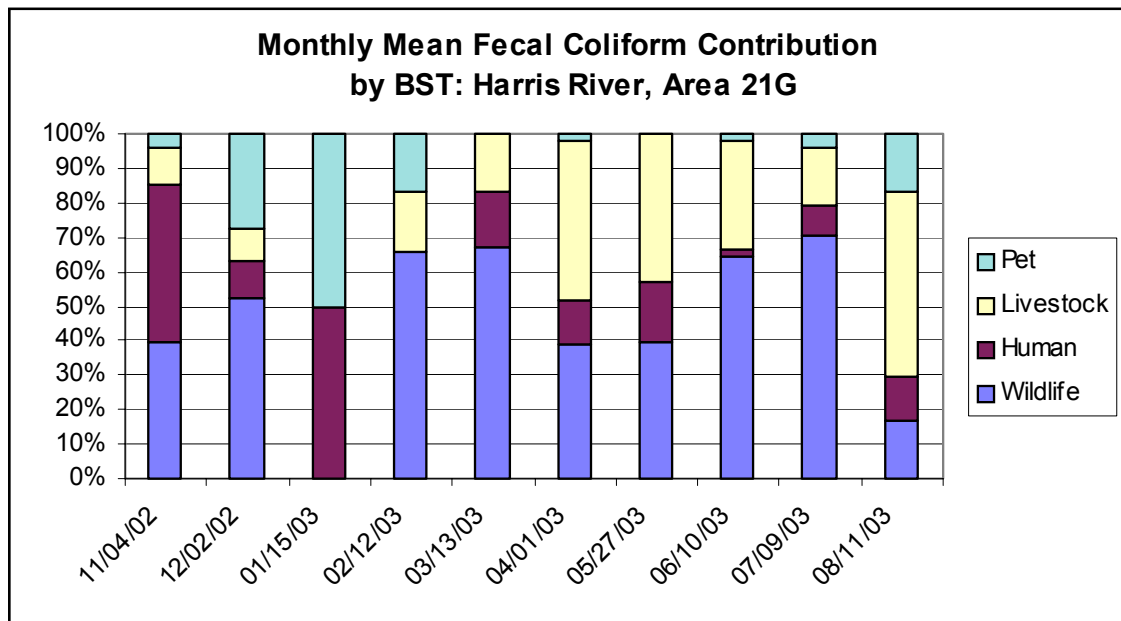


Figure 4.5F



*Note: No Figure is available for condemnation 21F

Figure 4.5G

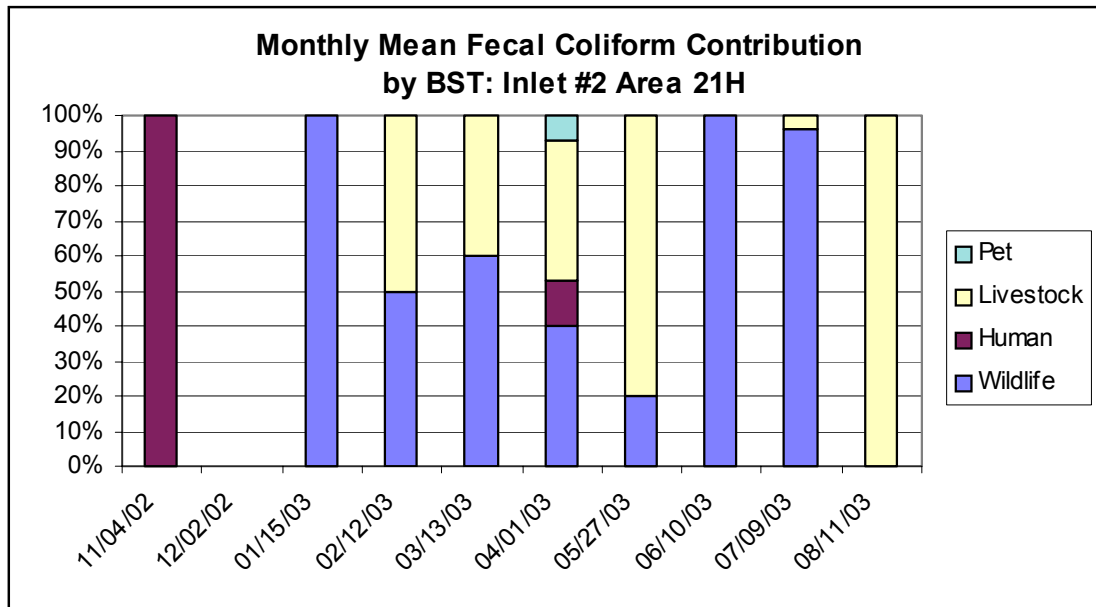


Figure 4.5H

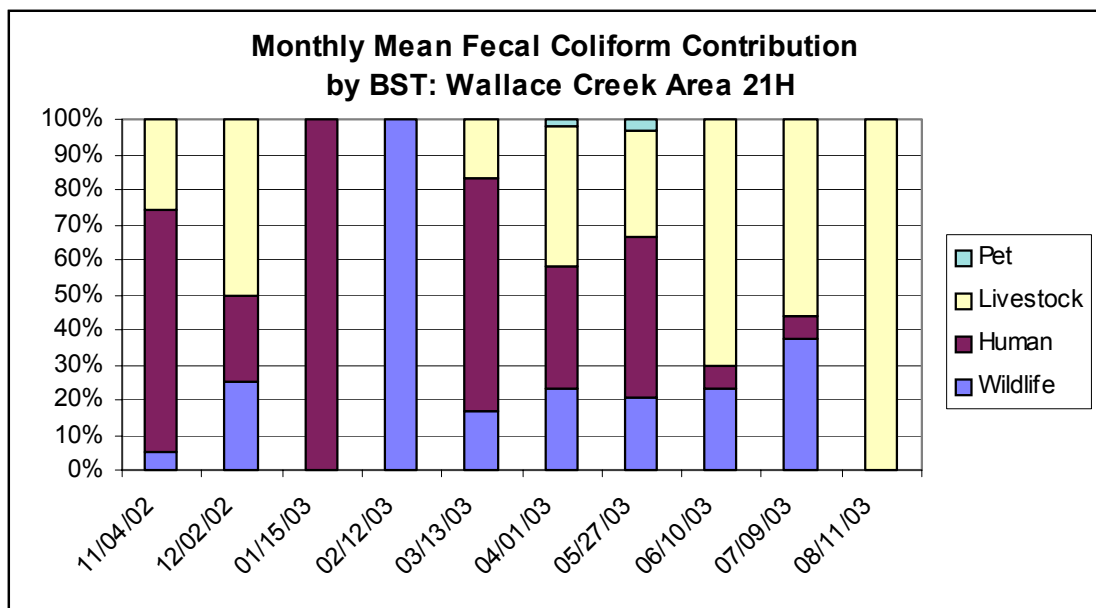


Figure 4.5I

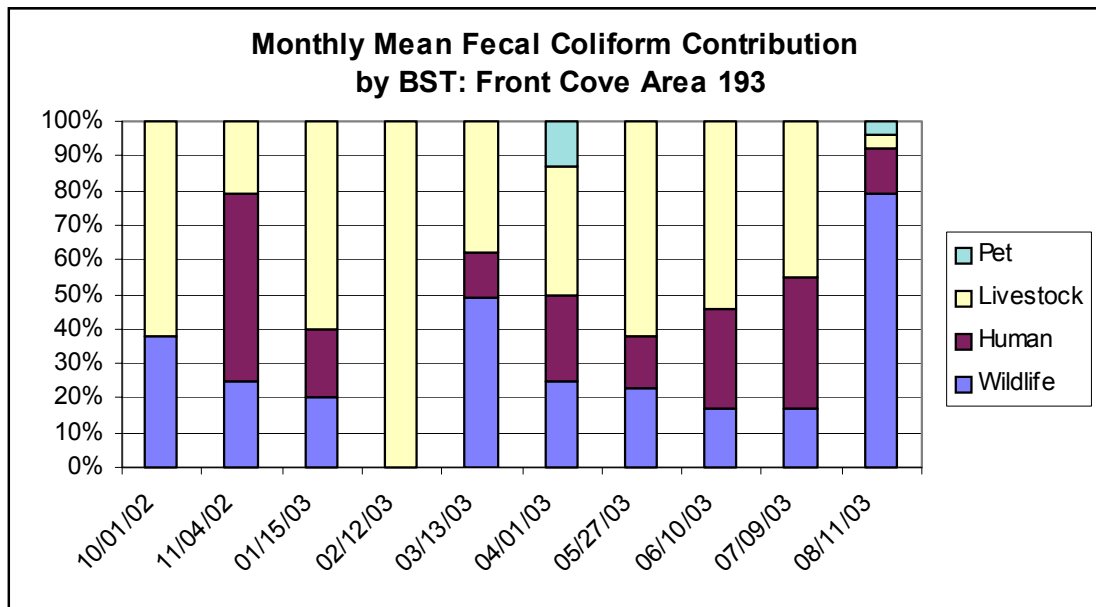


Figure 4.5J

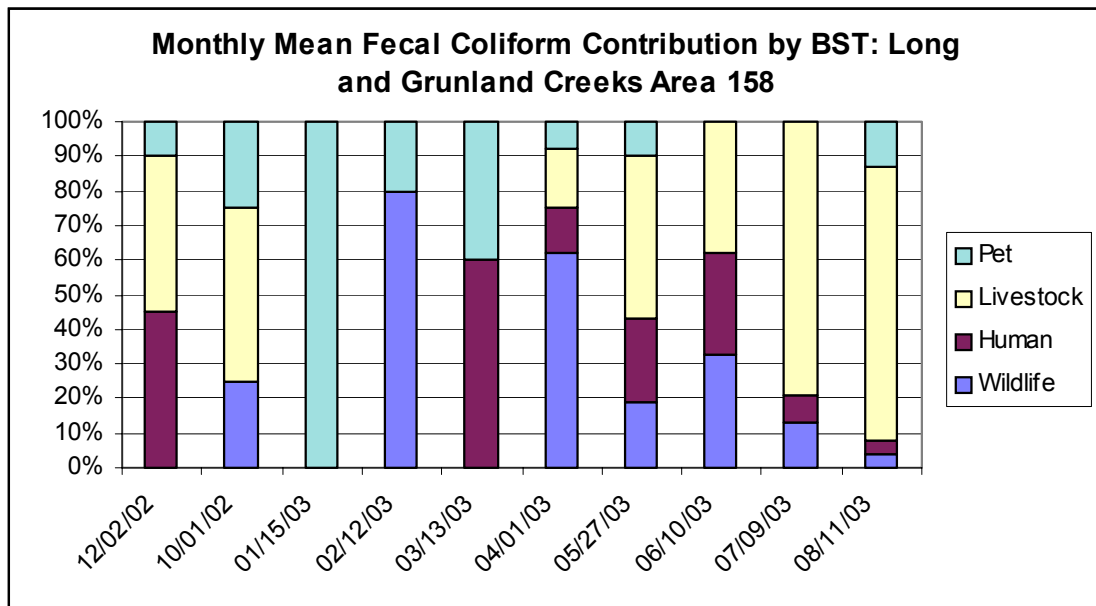


Figure 4.6A

**Annual Average Fecal Coliform Contribution
by BST: Topping Creek Area 21A**

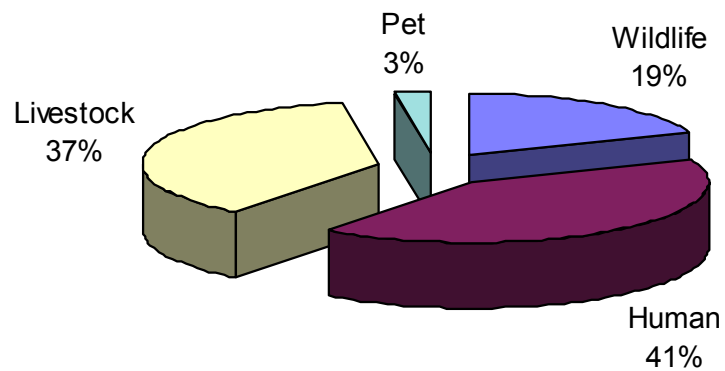


Figure 4.6 B

**Annual Average Fecal Coliform Contribution
by BST: Cedar Creek Area 21B**

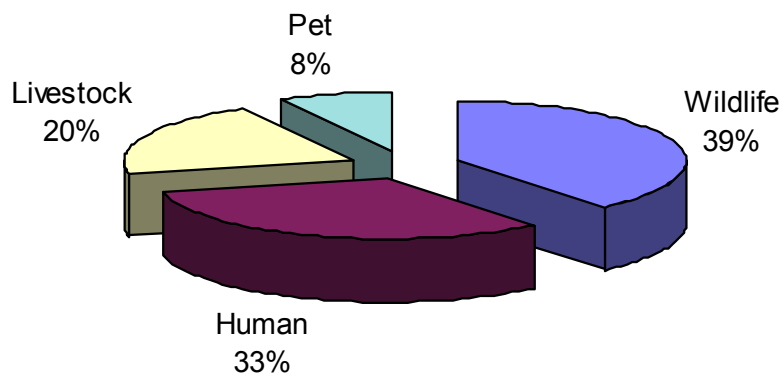


Figure 4.6 C

**Annual Average Fecal Coliform Contribution by
BST: NW Branch Back River Area 21C**

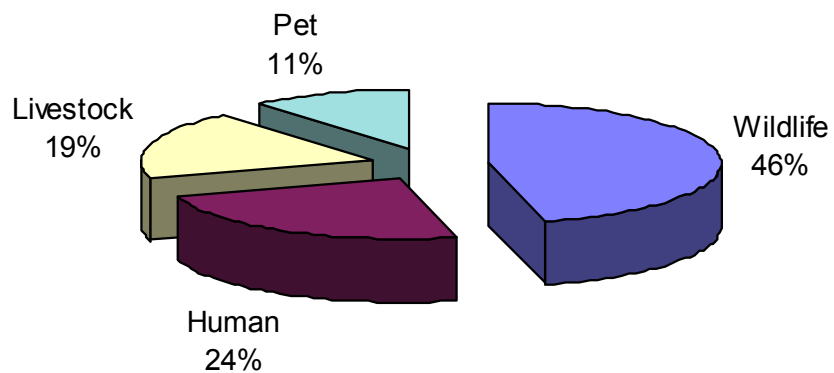


Figure 4.6 D

**Annual Average Fecal Coliform Contribution by
BST: Tabbs Creek Area 21D**

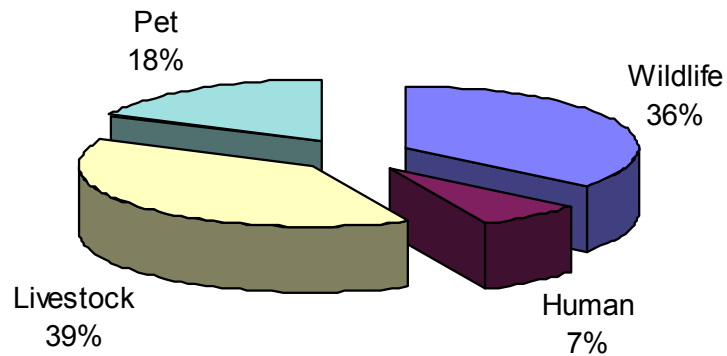


Figure 4.6 E

**Annual Average Fecal Coliform Contribution by
BST: SW Branch Back River Area 21E**

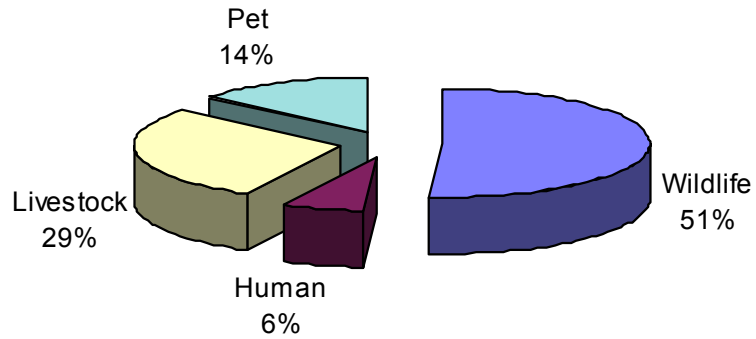


Figure 4.6 F

**Annual Average Fecal Coliform Contribution by
BST: Harris River Area 21G**

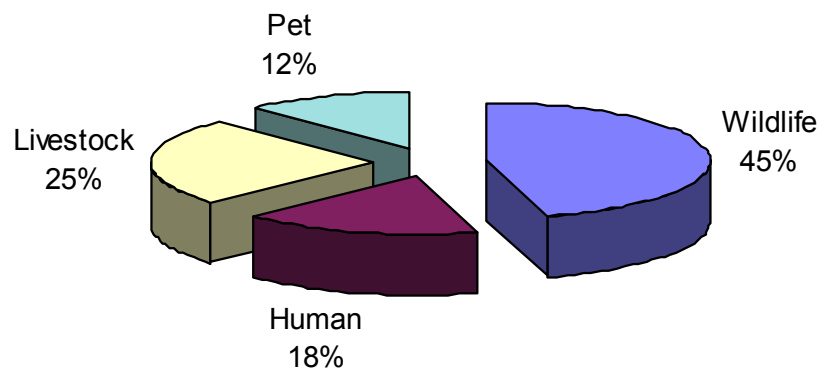


Figure 4.6 G

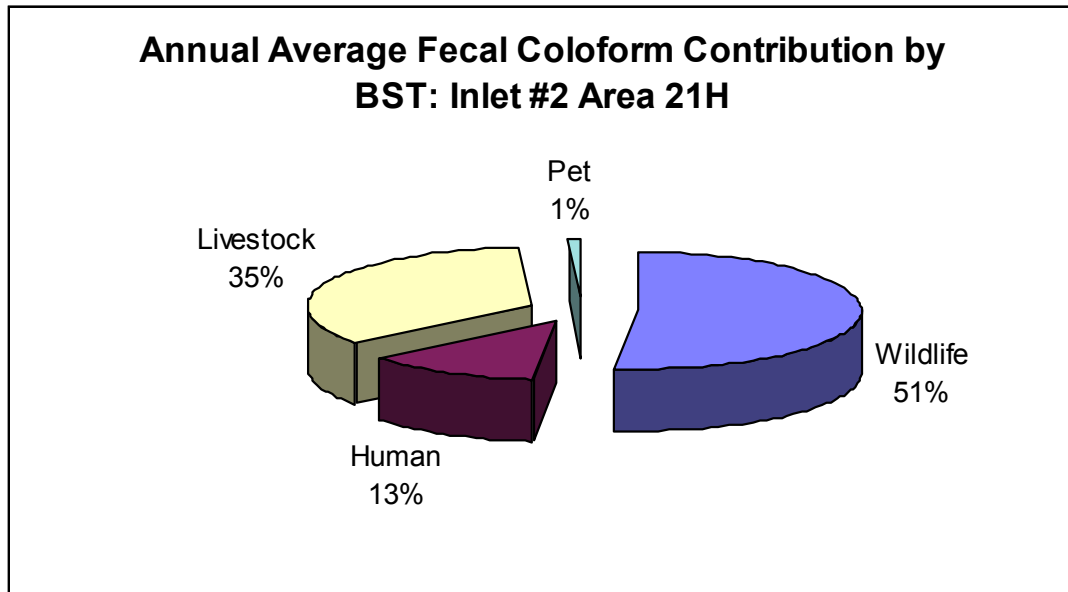


Figure 4.6 H

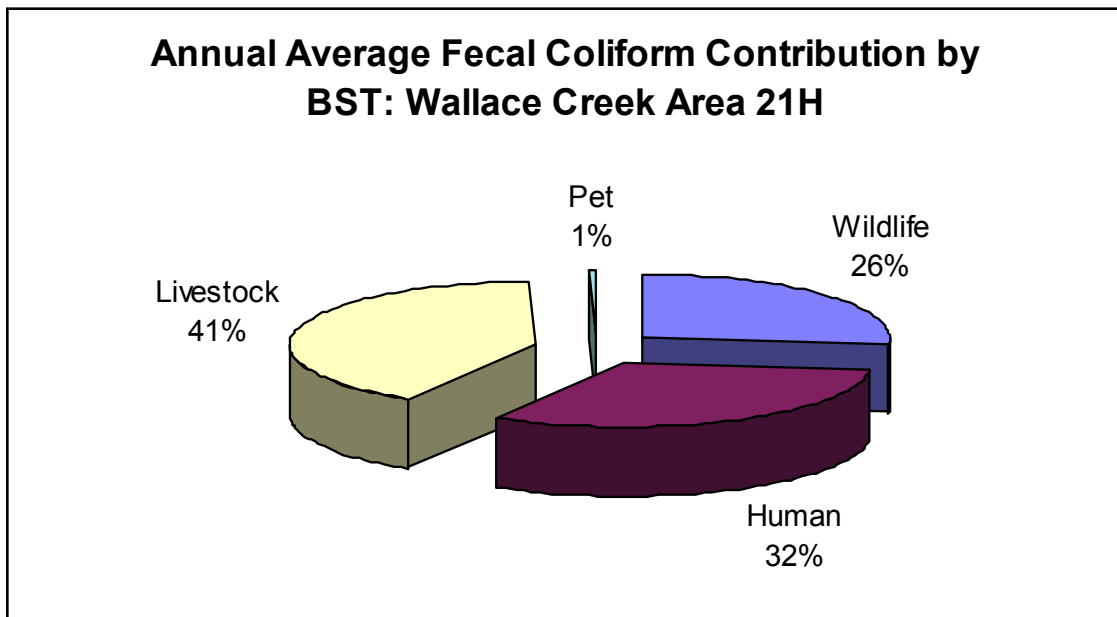


Figure 4.6 I

**Annual Average Fecal Coliform Contribution by
BST: Front Cove Area 193**

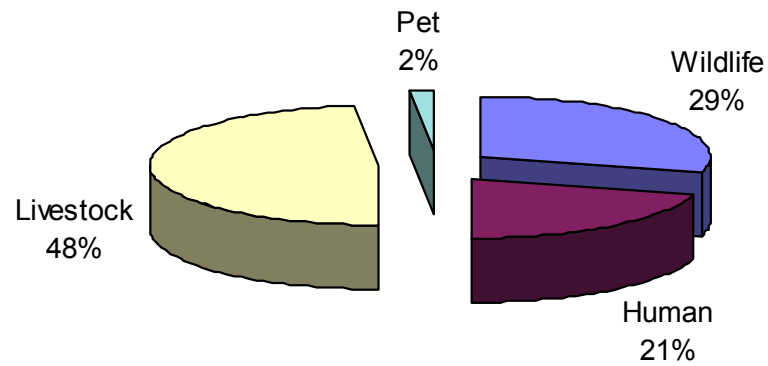
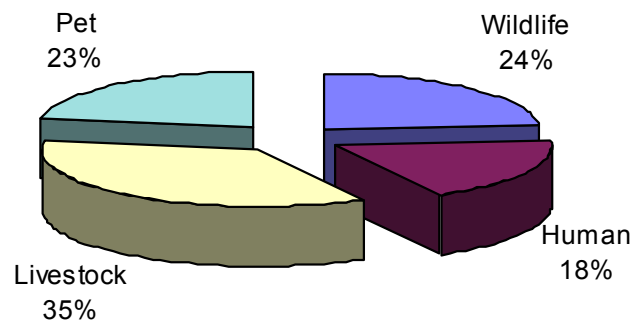


Figure 4.6 J

**Annual Average Fecal Coliform Contribution by
BST: Long and Grunland Creeks Area 158**



**Table 4.2 Non-point Source Load Distribution using BST
Growing area 54: Back River***

Condemnation Area	Livestock	Wildlife	Human	Pet
54-21A Topping Creek	37%	19%	41%	3%
54-21B Cedar Creek	20%	39%	33%	8%
54-21C NW Branch Back River	19%	46%	24%	11%
54-21D Tabbs Creek	39%	36%	7%	18%
54-21E SW Branch Back River	29%	51%	6%	14%
54-21G Harris River	25%	45%	18%	12%
54-21H Inlet#2	35%	51%	13%	1%
54-21H Wallace Creek	41%	26%	32%	1%
54-193 Front Cove	48%	29%	21%	2%
54-158 Long and Grunland Creeks	35%	24%	18%	23%

* no BST data is available for area 21F, Inlet #1, the nearest watershed with comparable land use will be used to perform source allocation.

5.0 TMDL Development

5.1 Simplified Modeling Approach (Tidal Volumetric Model):

Personnel from EPA, Virginia DEQ, Virginia Department of Conservation and Recreation (DCR), Maryland Department of the Environment (MDE), Virginia DSS, Virginia Institute of Marine Sciences (VIMS), United States Geological Survey, Virginia Polytechnic University, James Madison University, and Tetra Tech composed the shellfish TMDL workgroup and developed a procedure for developing TMDLs using either a simplified approach to the development of the TMDL. The goal of the procedure is to use bacteriological source tracking (BST) data to determine the sources of fecal coliform violations and the load reductions needed to attain the applicable criteria.

5.2 The TMDL Calculation

To meet the water quality standards for both geometric mean and 90th percentile criteria, TMDLs for the impaired segments in the watershed are defined for the geometric mean load and the 90th percentile load. The TMDL for the geometric mean essentially represents the allowable average limit and the TMDL for the 90th percentile is the allowable upper limit. If observed data were available for more than one monitoring station in a condemned area, the volume-weighted values for each condemned area were used to represent the embayment concentration.

A. Current Fecal Coliform Condition

The fecal coliform concentration in an embayment varies due to the changes in biological, hydrological and meteorological conditions. The current condition was determined based on the 30-sample geometric mean and 90th percentile of volume-weighted fecal coliform values of each condemned area. The period of record for the monitoring data used to determine the current condition is 1995 to 2002. This interval was chosen to ensure inclusion of the data that represents the conditions at the time the waters were first listed as impaired in 1998 and which overlaps the sampling period for the bacterial source tracking. The maximum values for the 30 month geometric mean and 90th percentile were used to represent the current loads. Therefore, the current loads represent the worse case scenario.

B. Geometric Mean Analysis:

The current 30-sample geometric mean was used for the load estimation. The corresponding 30-sample geometric mean from the station outside the condemned area was used as the boundary condition. The current load was estimated using the tidal volumetric model. The allowable load was calculated using the water quality standard of 14 MPN/100ml. The load reduction needed for the attainment of the water quality standard was determined by subtracting the allowable load from the current load. The process may be described by the word equation as follows. The calculated results are listed in table 5-2.

The load reduction is estimated as follows:

$$\text{Geometric Mean Value (X MPN/100ml) x (volume) = Existing Load}$$

$$\text{Criteria Value (14 MPN/100ml) x (volume) = Allowable Load}$$

$$\text{Load Reduction} = \frac{\text{Current Load} - \text{Allowable Load}}{\text{Current Load}} \times 100 \%$$

Table 5.1 Geometric Mean Analysis of Current Load and Estimated Load Reduction

Condemnation Area	Volume (m³)	Fecal Coliform (MPN/100 ml)	Water Quality Standard (MPN/100 ml)	Current Load (MPN/day)	Allowable Load (MPN/day)	Required Reduction (%)
54-20A Topping Creek	53190	11.4	14	6.07E+09	7.45E+09	0%
54-20B Cedar Creek	32670	16.4	14	5.36E+09	4.57E+09	15%
54-21C NW Branch Back River	176310	22.1	14	3.89E+10	2.47E+10	37%
54-21D Tabbs Creek	52020	20.1	14	1.05E+10	7.28E+09	31%
54-21E SW Branch Back River	2308500	15.1	14	3.48E+11	3.23E+11	7%
54-21F Inlet#1	12950	87.1	14	1.13E+10	1.81E+09	84%
54-21G Harris River	501840	14.4	14	7.25E+10	7.03E+10	3%
54-21H Inlet#2	5940	11.3	14	6.73E+08	8.32E+08	0%
54-21H Wallace Creek	41130	10.4	14	4.27E+09	5.76E+09	0%
54-193 Front Cove	32580	9.0	14	2.93E+09	4.56E+09	0%
54-158 Long and Grunland Creek	126630	20.1	14	2.55E+10	1.77E+10	30%

C. 90th Percentile Analysis

The current 30-sample 90th percentile concentration was used for load estimation. The corresponding 30-sample geometric mean from the station outside the condemned area was used as the boundary condition. The current load was estimated using steady state tidal prism model. The allowable load was calculated based on the water quality standard of 49 MPN/100ml. The calculated results are listed in Table 5-3.

The load reduction is estimated as follows:

$$\text{Load Reduction} = \frac{\text{Current Load} - \text{Allowable Load}}{\text{Current Load}} \times 100 \%$$

Table 5.2 90th Percentile Analysis of Current Load and Estimated Load Reduction

Condemnation Area	Volume (m ³)	Fecal Coliform (MPN/100ml)	Water Quality Standard (MPN/100ml)	Current Load (MPN/day)	Allowable Load (MPN/day)	Required Reduction (%)
54-20A Topping Creek	53190	62.9	49	3.34E+10	2.61E+10	22%
54-20B Cedar Creek	32670	134.0	49	4.38E+10	1.60E+10	63%
54-21C NW Branch Back River	176310	137.7	49	2.43E+11	8.64E+10	64%
54-21D Tabbs Creek	52020	184.0	49	9.57E+10	2.55E+10	73%
54-21E SW Branch Back River	2308500	109.5	49	2.53E+12	1.13E+12	55%
54-21F Inlet#1	12950	816.0	49	1.06E+11	6.35E+09	94%
54-21G Harris River	501840	107.9	49	5.41E+11	2.46E+11	55%
54-21H Inlet#2	5940	86.7	49	5.15E+09	2.91E+09	43%
54-21H Wallace Creek	41130	66.6	49	2.74E+10	2.02E+10	26%
54-193 Front Cove	32580	50.9	49	1.66E+10	1.60E+10	4%
54-158 Long and Grunland Creek	126630	123.1	49	1.56E+11	6.20E+10	60%

D. Recreational Impairment Analysis

Two water quality standards operate in salt water areas with regard to recreation use, the fecal coliform standard, which is a transitional standard that expires on June 30, 2008, and the *enterococci* standard which is applied concurrently. Because more than 12 enterococci samples exist in this watershed the *enterococci* standard supercedes the fecal coliform standard for recreational use.

The recreational use load for the upper Poquoson River Creek and its tributaries is estimated volumetricly by the following equation:

$$\text{Max. Single highest } \textit{enterococci} \text{ value} \times \text{volume} = \textit{enterococci} \text{ load}$$

The load reduction for each standard is calculated utilizing a similar approach as used for the shellfish reductions:

$$\text{Load reduction} = \frac{\text{current load}_{\text{max}} - \text{allowable load}}{\text{currentload}_{\text{max}}}$$

The results for these calculations is shown in Table 5.3 .

Table 5.3 Calculations for Recreation Use Impairments in Back River Watershed

Impaired Area	Volume (m ³)	Bacteria Pollutant	Current Load (cfu/day)	Allowable Load (cfu/day)	Required Reduction (%)
VAT-C07E-01 Brick Kiln Creek and NW Branch Back River	176310	<i>Enterococci</i>	3.00E+13	2.40E+12	92%
(same as VAT-C07E-21)		Fecal Coliform*	2.43E+11	8.64E+10	64%
VAT-C07E-02 & VAT-C07E-03 New Market Creek 1 and 2 and SW Branch Back River	2308500	<i>Enterococci</i>	2.82E+12	1.83E+11	94%
Same as VAT-C07E-22		Fecal Coliform*	2.53E+12	1.13E+12	55%

*** Because these waters are estuarine and overlie shellfish waters the limits for the fecal coliform shellfish standard is more stringent than the recreation use fecal coliform standard . Therefore the shellfish standards load allocation applies to these segments for fecal coliform.**

5.3 Load Allocation

In allocating the load for the *enterococci* impairments, the apportioning by BST for the shellfish fecal coliform bacteria component is recommended in the absence of BST data specific to *enterococci*.

A comparison of the reductions based on geometric mean load and on the 90th percentile load shows that the 90th percentile load is the critical condition for the shellfish standard. This is consistent with water quality analysis. The 90th percentile criterion is most frequently exceeded. Therefore the 90th percentile loading is used to allocate source contributions and establish load reduction targets among the various contributing sources that will yield the necessary water quality improvements to attain the water quality standard. In waters with *enterococci* the largest reductions in the watershed are achieved by applying this standard's reductions rather than the shellfish standards reductions.

Based on source assessment of the watershed, the percent loading for each of the major source categories is estimated. These percentages are used to determine where load reductions are needed. The loadings for each source are determined by multiplying the total current and allowable loads by

**Table 5.4 Reduction and Allocation Based Upon 90th Percentile Standard:
Growing Area 54**

Condemnation Area	Source	BST Allocation % of Total Load	Current Load MPN/ day	Load Allocation MPN/ day	Reduction Needed
21A Topping Creek	Livestock	37	1.24E+10	1.03E+10	16%
	Wildlife	19	6.35E+09	6.35E+09	0%
	Human	41	1.37E+10	8.41E+09	39%*
	Pets	3	1.00E+09	1.00E+09	0%
	Total	100	3.34E+10	2.61E+10	22%
21B Cedar Creek	Livestock	20	8.75E+09	0.00E+00	100%
	Wildlife	39	1.71E+10	1.60E+10	7%
	Human	33	1.44E+10	0.00E+00	100%
	Pets	8	3.50E+09	0.00E+00	100%
	Total	100	4.38E+10	1.60E+10	63%
21C Northwest Branch Back River	Livestock	19	4.61E+10	0.00E+00	100%
	Wildlife	46	1.12E+11	8.64E+10	23%
	Human	24	5.83E+10	0.00E+00	100%
	Pets	11	2.67E+10	0.00E+00	100%
	Total	100	2.43E+11	8.64E+10	64%
21D Tabbs Creek	Livestock	39	3.73E+10	0.00E+00	100%
	Wildlife	36	3.45E+10	2.55E+10	26%
	Human	7	6.70E+09	0.00E+00	100%
	Pets	18	1.72E+10	0.00E+00	100%
	Total	100	9.57E+10	2.55E+10	73%
21E Southwest Branch Back River	Livestock	29	1.57E+11	0.00E+00	100%
	Wildlife	51	2.76E+11	2.46E+11	11%
	Human	6	3.25E+10	0.00E+00	100%
	Pets	14	7.58E+10	0.00E+00	100%
	Total	100	5.41E+11	2.46E+11	55%
21F Inlet #1	Livestock	20	2.11E+10	0.00E+00	100%
	Wildlife	39	4.12E+10	6.35E+09	85%
	Human	33	3.49E+10	0.00E+00	100%
	Pets	8	8.45E+09	0.00E+00	100%
	Total	100	1.06E+11	6.35E+09	94%
21G Harris River	Livestock	25	1.35E+11	0.00E+00	100%
	Wildlife	45	2.44E+11	2.44E+11	0%
	Human	18	9.74E+10	0.00E+00	100%
	Pets	12	6.50E+10	2.60E+09	96%
	Total	100	5.41E+11	2.46E+11	55%

**Table 5.4 Reduction and Allocation Based Upon 90th Percentile Standard:
Growing Area 54**

Condemnation Area	Source	BST Allocation % of Total Load	Waste Load Allocation	Load Allocation MPN/ day	Percent Reduction Needed
21H Inlet#2	Livestock	35	1.80E+09	2.34E+08	87%
	Wildlife	51	2.63E+09	2.63E+09	0%
	Human	13	6.69E+08	0.00E+00	100%
	Pets	1	5.15E+07	5.15E+07	0%
	Total	100	5.15E+09	2.91E+09	43%
21H Wallace Creek	Livestock	41	1.12E+10	1.12E+10	0%
	Wildlife	26	7.13E+09	7.13E+09	0%
	Human	32	8.77E+09	1.58E+09	82%*
	Pets	1	2.74E+08	2.74E+08	0%
	Total	100	2.74E+10	2.02E+10	26%
193 Front Cove	Livestock	48	7.96E+09	7.96E+09	0%
	Wildlife	29	4.81E+09	4.81E+09	0%
	Human	21	3.48E+09	2.86E+09	18%*
	Pets	2	3.32E+08	3.32E+08	0%
	Total	100	1.66E+10	1.60E+10	4%
158 Long & Grunland Creeks	Livestock	35	5.46E+10	0.00E+00	100%
	Wildlife	24	3.74E+10	3.74E+10	0%
	Human	18	2.81E+10	0.00E+00	100%
	Pets	23	3.59E+10	2.46E+10	32%
	Total	100	1.56E+11	6.20E+10	60%

* Though a human load is shown this is done purely to inform the implementation planning process. From a Clean Water Act perspective human discharges to waters of the United States should be reduced to zero regardless of source and whether the water quality standard is met with human discharges present.

the representative percentage. The percent reduction needed to attain the water quality standard or criterion is allocated to each source category. This is shown in Table 5-4 and serves to fulfill the TMDL requirements by ensuring that the criterion is attained.

The TMDL seeks to eliminate 100% of the human derived fecal component regardless of the allowable load determined through the load allocation process. Human derived fecal coliforms are a serious concern in the estuarine environment and discharge of human waste is precluded by state and federal law. According to the preceding analysis, reduction of the controllable loads; human, livestock and pets, will not result in achievement of the water quality standard for condemned areas 126 or 129. Absent any other sources, the reduction is allocated to wildlife. Through an iterative implementation of actions to reduce the controllable loads, subsequent monitoring may indicate that further reductions are not necessary, or that revisions in implementation strategies may be appropriate. Continued violations may result in the process of Use Attainment Analysis, UAA, for the waterbody (see Chapter

6 for a discussion of UAA). The allocations presented demonstrate how the TMDLs could be implemented to achieve water quality standards; however, the state reserves the right to allocate differently, as long as consistency with the achievement of water quality standards is maintained.

5.3.1 Development of Wasteload Allocations

Contributions of pollutants which arrive in a natural system through man-made treatment works such as waste water treatment plants and storm water management systems that are regulated by a VPDES permit constitute a separate load to the system. This pollutant load is evaluated differently than contributions from wildlife and birds that arrive via more diffuse pathways. This source of loading from anthropogenic sources is termed a waste load allocation (WLA) and is the sum of all man-made sources which are regulated under § 402 of the Clean Water Act by the Department of Environmental Quality under the Virginia Pollutant Discharge Elimination System (VPDES). The relationship to the total load allocation (TLA) and load allocation (LA) is shown below:

Total Load Allocation = Waste Load Allocation (WLA) + Margin of Safety (MOS) + Load Allocation (LA)

There are a number of methods which may be used to derive the waste load allocation in watersheds. Where a sewage treatment plant, or other permitted treatment plant, is discharging to the system, flow and the pollutant of concern are normally measured at the discharge and are regulated by a permit issued by DEQ. In such cases the waste load is known or easily derived. In systems where non-point source contributions arrive through more diffuse sources such as storm water management systems and constructed best management practices (BMPs), determination of a waste load allocation is not as direct and therefore more approximate. This is because such systems are not practical to monitor for the specific pollutant of concern.

A simple but useful approach in urbanized systems such as the City of Poquoson, City of Hampton, and surrounding York County is to adopt an weighted mean approach based upon land use and known average impervious area by land use type. This is the approach adopted in this TMDL.

Weighted mean or weighted average is calculated as follows:

$$\bar{x} = \frac{\sum_{i=1}^n w_i x_i}{\sum_{i=1}^n w_i}$$

Or

$$\bar{x} = \frac{w_1 x_1 + w_2 x_2 + w_3 x_3 + \dots + w_n x_n}{w_1 + w_2 + w_3 + \dots + w_n}$$

where:

x_n is a given data value

w_n is the weight of that value

Because of the breadth and extent of the Back River Watershed, and the diversity of land use within each sub-watershed, weight averaging the percent impervious area by land use type within each sub-watershed more accurately represents the contribution to the receiving waters from the storm water system. Utilizing this method the waste load allocation (WLA) is arrived at by attributing the percentage of land use contribution, minus water and wetland, as a subset of the total load allocation (TLA). The WLA is attributed to the storm water system permitted under the Virginia Pollutant Discharge Elimination System (VPDES) in the Back River Drainage and is assumed to be reflective of the contribution of the developed area in the sub-watershed. The waste load allocation is then determined using the following formula:

Waste Load Allocation (WLA) for a Sub-watershed A = X% of the Total Load Allocation for Sub-watershed A

$$WLA = (TLA) * X\%$$

Figures 5-5 through 5-12 with their attached tables, show the land use in the watershed and the weight average calculated percent impervious area by land use type for each of these sub-watersheds. Impervious Area for the purposes of this calculation is defined as follows:

- 0% - wetlands and waters
- 2% - all grasslands, forests and croplands
- 9% - all barren and transitional land
- 20% - all residential areas
- 70% - all commercial, industrial, military and highway areas

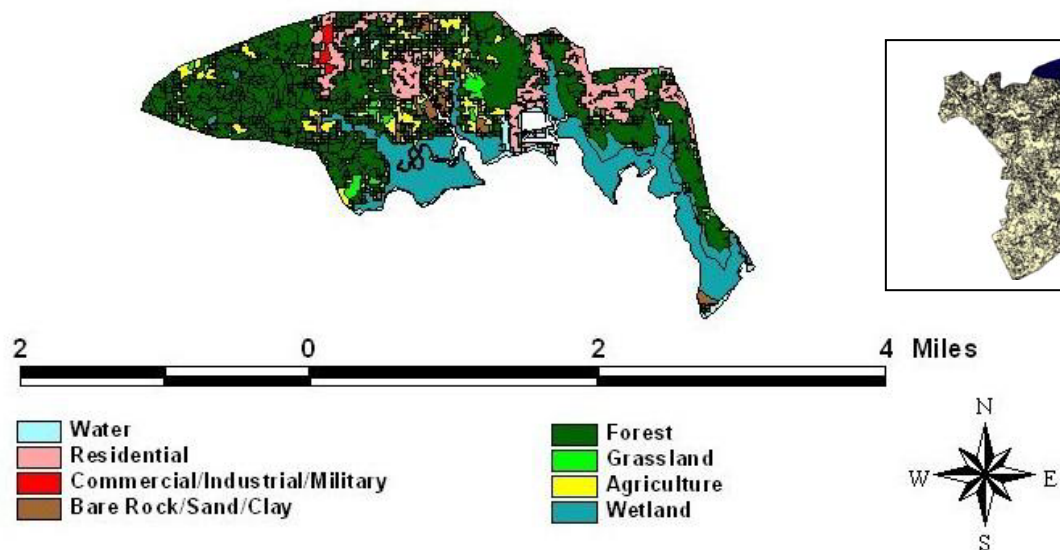
5.4 Consideration of Critical Conditions and Seasonal Variation

EPA regulations at 40 CFR 130.7 (c)(1) require TMDLs to take into account critical conditions for stream flow, loading, and water quality parameters. The intent of this requirement is to ensure that the water quality of the waterbody is protected during times when they are most vulnerable.

Critical conditions are important because they describe the factors that combine to cause a violation of water quality standards and will help in identifying the actions that may have to be undertaken to meet water quality standards. The current loading to the waterbody was determined using a long-term record of water quality monitoring (observation) data. The period of record for the data was 1995 to 2002. The resulting estimate is quite robust.

A comparison of the geometric mean values and the 90th percentile values against the water quality criteria will determine which represents the more critical condition or higher percent reduction. If the geometric mean values dictate the higher reduction, this suggests that, on average, water sample counts are consistently high with limited variation around the mean. If the 90th percentile criterion requires a

Figure 5.0
Cedar and Topping Creek Watershed
Land Use Distribution by Type

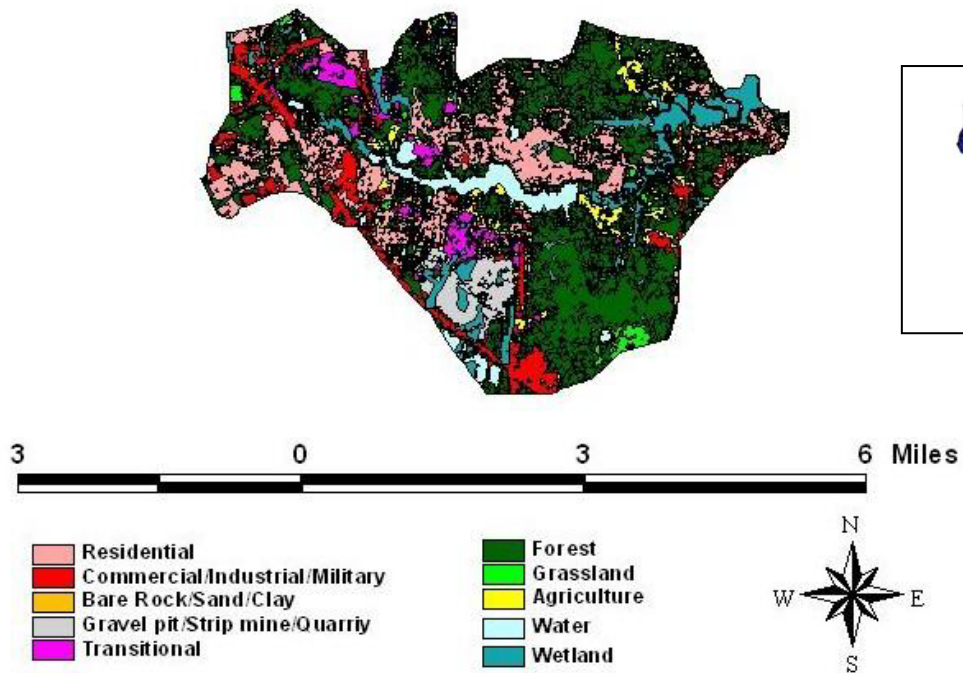


Topping and Cedar Creek Impervious Area Calculation by Land Use Type

Impervious area (weight factor)	Acres	Weight x Acres
2% impervious	1467.8	29.4
9% Impervious	91.7	8.3
20% Impervious	298.0	59.6
70% Impervious	28.6	20.0
Watershed Totals	1886.1	117.2

Impervious Area = $\frac{(\% \text{IMPERVIOUS}) \times (\text{Acres of Impervious Type})}{\text{Total watershed acres (less water and wetlands)}} = 6\%$

Figure 5.1
Northwest Branch Back River
and Brick Kiln Creek Landuse
Distribution by Type

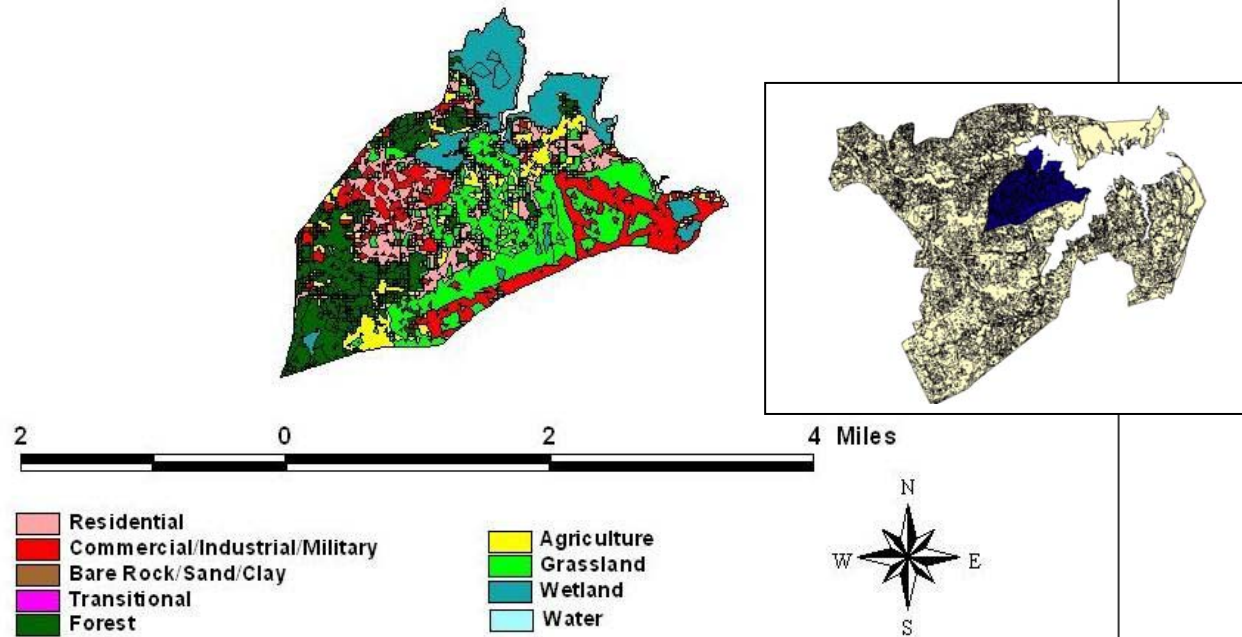


Northwest Branch Back River and Brick Kiln Creek
Impervious Area Calculation by Land Use Type

Impervious area (weight factor)	Acres	Weight x Acres
2% impervious	5549.1	111.0
9% Impervious	318.5	28.7
20% Impervious	2315.5	463.1
70% Impervious	893.2	625.2
Watershed Totals	9076.2	1228.0

Impervious Area = $\frac{(\% \text{IMPERVIOUS}) \times (\text{Acres of Impervious Type})}{\text{Total watershed acres (less water and wetlands)}} = 14\%$

Figure 5.2
Tabbs Creek Land Use
Distribution by Type



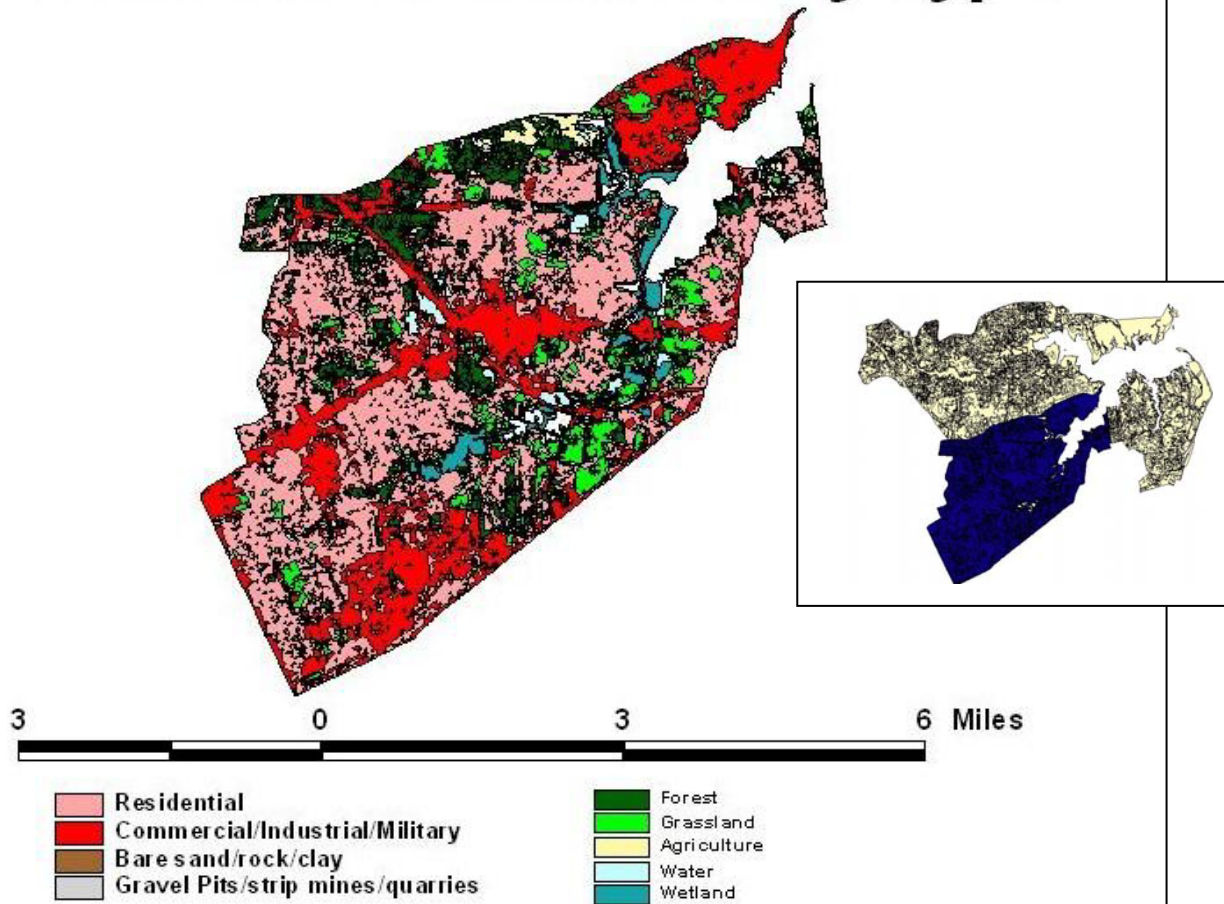
Tabbs Creek Impervious Area Calculation by Land Use Type

Impervious area (weight factor)	Acres	Weight x Acres
2% impervious	1572.0	31.4
9% Impervious	5.9	0.5
20% Impervious	380.2	76.0
70% Impervious	502.0	351.4
Watershed Totals	2460.1	459.4

Impervious Area = $\frac{(\% \text{IMPERVIOUS}) \times (\text{Acres of Impervious Type})}{\text{Total watershed acres (less water and wetlands)}} = 19\%$

Figure 5.3

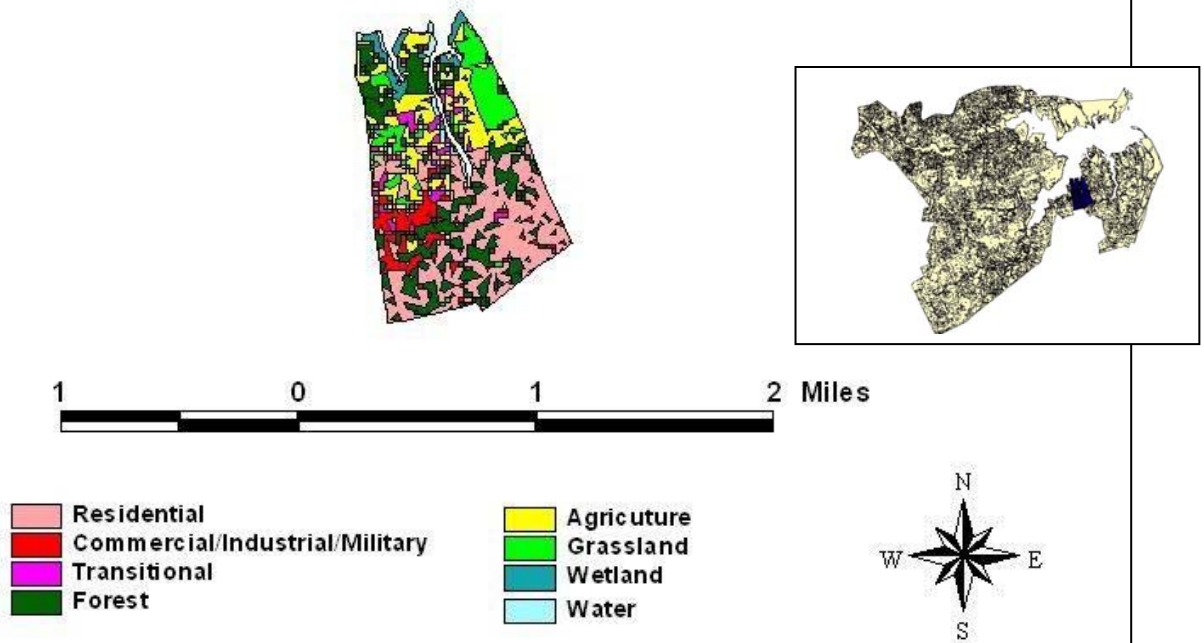
Southwest Branch Back River Land Use Distribution by Type



Southwest Branch Back River and New Market Creek Impervious Area Calculation by Land Use Type

Impervious area (weight factor)	Acres	Weight x Acres
2% impervious	3427.4	68.5
9% Impervious	1.5	0.1
20% Impervious	4962.7	992.5
70% Impervious	3809.7	2666.8
Watershed Totals	12201.2	3728.0
Impervious Area = $\frac{(\% \text{IMPERVIOUS}) \times (\text{Acres of Impervious Type})}{\text{Total watershed acres (less water and wetlands)}} = 31\%$		

Figure 5.4
Inlet #1 Land Use Distribution by Type

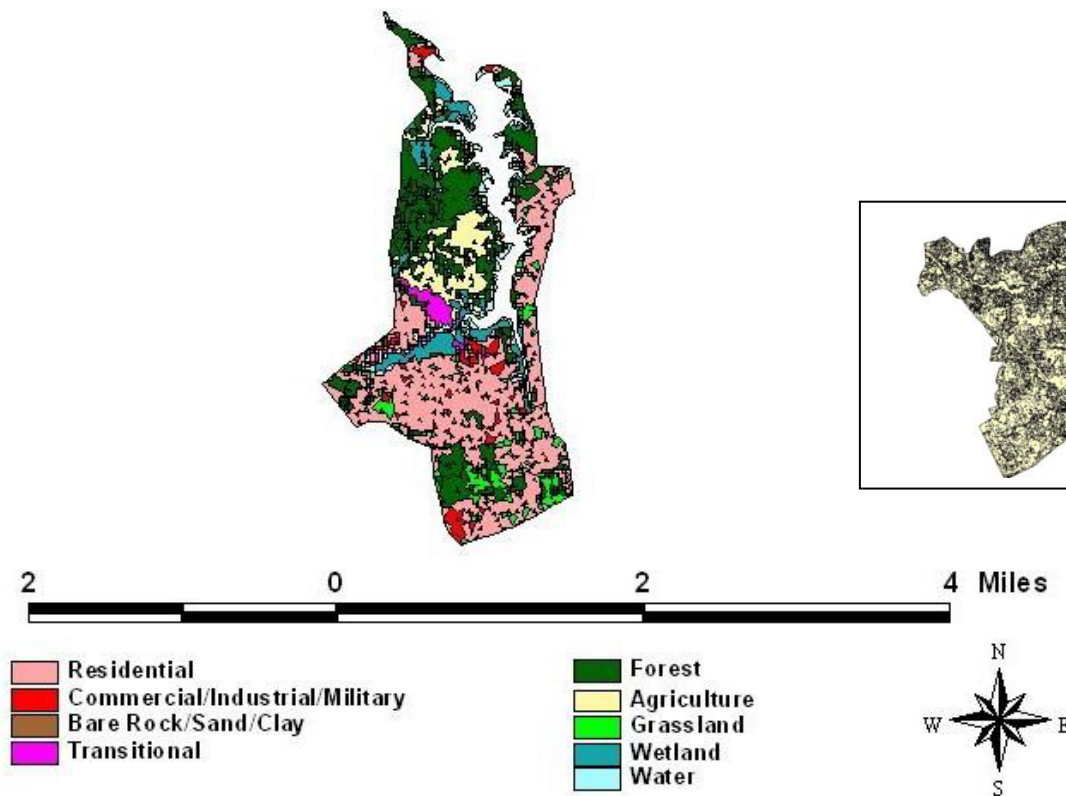


Inlet #1 Impervious Area Calculation by Land Use Type

Impervious area (weight factor)	Acres	Weight x Acres
2% impervious	264.9	5.3
9% Impervious	27.2	2.4
20% Impervious	169.5	33.9
70% Impervious	37.4	26.2
Watershed Totals	499.1	67.8

Impervious Area = $\frac{(\% \text{IMPERVIOUS}) \times (\text{Acres of Impervious Type})}{\text{Total watershed acres (less water and wetlands)}} = 14\%$

Figure 5.5
Harris River Land Use Distribution by Type



Harris River Impervious Area Calculation by Land Use Type

Impervious area (weight factor)	Acres	Weight x Acres
2% impervious	575.4	11.5
9% Impervious	38.9	3.5
20% Impervious	548.2	109.6
70% Impervious	70.5	49.3
Watershed Totals	1233.0	174.0

Impervious Area = $\frac{(\% \text{IMPERVIOUS}) \times (\text{Acres of Impervious Type})}{\text{Total watershed acres (less water and wetlands)}} = 14\%$

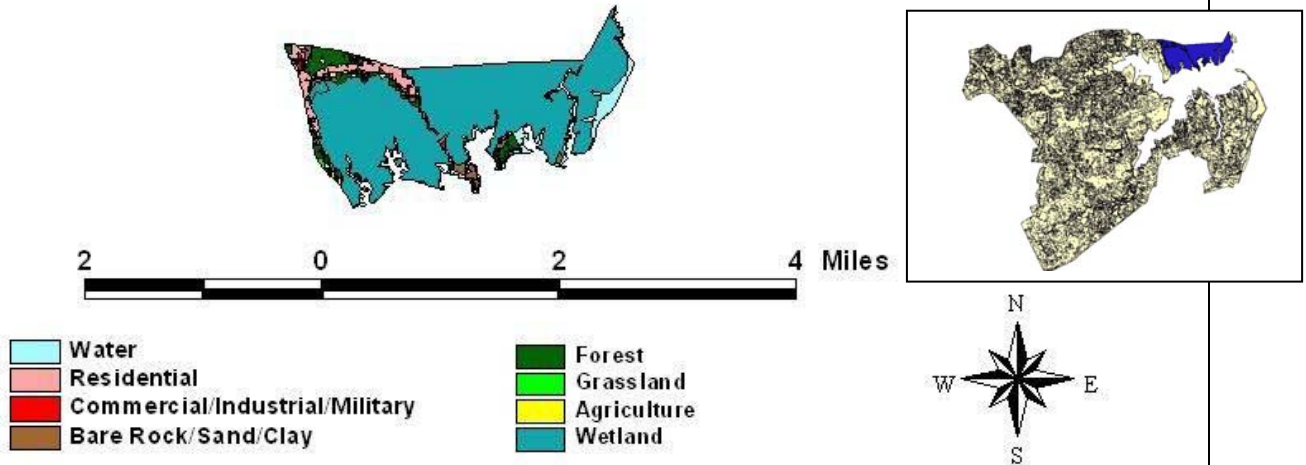


Wallace Creek and Inlet#2 Impervious Area Calculation by Land Use Type

Impervious area (weight factor)	Acres	Weight x Acres
2% impervious	270.8	5.4
9% Impervious	44.8	4.0
20% Impervious	183.5	36.7
70% Impervious	25.0	17.5
Watershed Totals	524.0	63.6

Impervious Area =
$$\frac{(\% \text{IMPERVIOUS}) \times (\text{Acres of Impervious Type})}{\text{Total watershed acres (less water and wetlands)}} = 12\%$$

Figure 5.7
Front Cove Land Use Distribution by Type

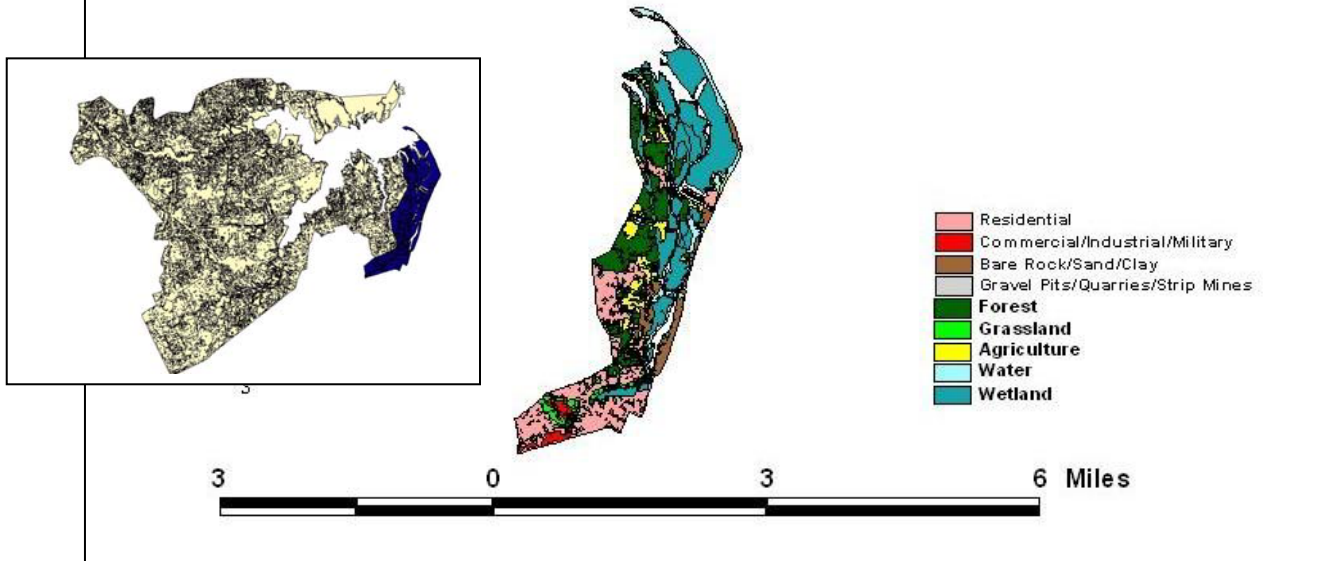


Front Cove Watershed Impervious Area Calculation by Land Use Type

Impervious area (weight factor)	Acres	Weight x Acres
2% impervious	104.2	2.1
9% Impervious	33.8	3.0
20% Impervious	62.4	12.5
70% Impervious	7.3	5.1
Watershed Totals	207.7	22.7

Impervious Area = $\frac{(\% \text{IMPERVIOUS}) \times (\text{Acres of Impervious Type})}{\text{Total watershed acres (less water and wetlands)}} = 11\%$

Figure 5.8
Long and Grunland Creeks Land
Use Distribution by Type



Long and Grunland Creek Watershed
Impervious Area Calculation by Land Use Type

Impervious area (weight factor)	Acres	Weight x Acres
2% impervious	678.1	13.6
9% Impervious	165.1	14.9
20% Impervious	514.5	102.9
70% Impervious	77.8	54.5
Watershed Totals	1435.5	185.8

Impervious Area =
$$\frac{(\% \text{IMPERVIOUS}) \times (\text{Acres of Impervious Type})}{\text{Total watershed acres (less water and wetlands)}} = 13\%$$

higher reduction, this suggests an occurrence of the high fecal coliform due to the variation of hydrological conditions. For this study, the 90th percentile criterion is the most critical condition except in waters where the reductions required to meet the recreation use *enterococci* standard are higher. Thus, the final load reductions determined using the 90th percentile or the *enterococci* standard will represent the most stringent conditions and it is the reductions based on these bacterial loadings that will yield attainment of the water quality standard. Seasonal variations involve changes in surface runoff, stream flow, and water quality as a result of hydrologic and climatologic patterns. Variations due to changes in the hydrologic cycle as well as temporal variability in fecal coliform sources, such as migrating duck and goose populations are accounted for by the use of the long-term data record to estimate the current load.

5.5. Margin of Safety

A Margin of Safety (MOS) is required as part of a TMDL in recognition of uncertainties in the understanding and simulation of water quality in natural systems. For example, knowledge is incomplete regarding the exact nature and magnitude of pollutant loads from various sources and the specific impacts of those pollutants on the chemical and biological quality of complex, natural water bodies. The MOS is intended to account for such uncertainties in a manner that is conservative from the standpoint of environmental protection.

The conservative assumptions made in the volumetric tidal modeling approach result in a equally conservative estimate in the TMDL calculation. Therefore, the MOS is implicitly included in the calculation.

5.6 TMDL Summary

To meet the water quality standards for both geometric mean and 90th percentile criteria, TMDLs for the Back River Watershed are defined for the geometric mean load and the 90th percentile load. The TMDLs are summarized in the table 5.4 and 5.5.

6.0 TMDL Implementation

Once a TMDL has been approved by EPA, measures must be taken to reduce pollution levels from both point and non point sources in the stream (see section 7.4.2). For point sources, all new or revised VPDES/NPDES permits must be consistent with the TMDL WLA pursuant to 40 CFR ‘122.44 (d)(1)(vii)(B) and must be submitted to EPA for approval. The measures for non point source reductions, which can include the use of better treatment technology and the installation of best management practices (BMPs), are implemented in an iterative process that is described along with specific BMPs in the implementation plan. The process for developing an implementation plan has been described in the “TMDL Implementation Plan Guidance Manual”, published in July 2003 and available upon request from the DEQ and DCR TMDL project staff or at <http://www.deq.virginia.gov/tmdl/implans/ipguide.pdf> With successful completion of implementation plans, local stakeholders will have a blueprint to restore impaired waters and enhance the value of their land and water resources. Additionally, development of an approved implementation plan may enhance opportunities for obtaining financial and technical assistance during implementation.

Table 5.5 TMDL Summary for Shellfish Closures in the Back River Watershed (geometric mean)

Condemnation Area	Pollutant Identified	Total TMDL MPN/day	Waste Load Allocation MPN/day	Load Allocation MPN/day	Margin of Safety
54-21A Topping Creek	Fecal Bacteria	7.45E+09	4.47E+08	7.00E+09	Implicit
54-21B Cedar Creek	Fecal Bacteria	4.57E+09	2.74E+08	4.30E+09	Implicit
54-21C NW Branch Back River	Fecal Bacteria	2.47E+10	3.46E+09	2.12E+10	Implicit
54-21D Tabbs Creek	Fecal Bacteria	2.55E+20	4.84E+19	2.06E+20	Implicit
54-21E SW Branch Back River	Fecal Bacteria	3.23E+11	1.00E+11	2.23E+11	Implicit
54-21F Inlet #1	Fecal Bacteria	1.81E+09	2.53E+08	1.56E+09	Implicit
54-21G Harris River	Fecal Bacteria	7.03E+10	9.84E+09	6.05E+10	Implicit
54-21H Inlet#2	Fecal Bacteria	8.32E+08	9.98E+07	7.32E+08	Implicit
54-21H Wallace Creek	Fecal Bacteria	5.76E+09	6.91E+08	5.07E+09	Implicit
54-193A Front Cove	Fecal Bacteria	4.56E+09	5.02E+08	4.06E+09	Implicit
54-158 Long and Grunland Creek	Fecal Bacteria	1.77E+10	2.30E+09	1.54E+10	Implicit

6.1 Staged Implementation

In general, Virginia intends for the required bacteria reductions to be implemented in an iterative process that first addresses those sources with the largest impact on water quality. For example, in agricultural areas of the watershed, the most promising management practice is livestock exclusion from streams. This has been shown to be very effective in lowering bacteria concentrations in streams, both by reducing the cattle deposits themselves and by providing additional riparian buffers.

Additionally, in both urban and rural areas, reducing the human bacteria loading from failing septic systems should be a primary implementation focus because of its health implications. This component could be implemented through education on septic tank pump-outs as well as a septic system repair/replacement program and the use of alternative waste treatment systems.

In urban areas, reducing the human bacteria loading from leaking sewer lines could be accomplished through a sanitary sewer inspection and management program. Other BMPs that might be appropriate for controlling urban wash-off from parking lots and roads and that could be readily implemented may include more restrictive ordinances to reduce fecal loads from pets, improved garbage collection and control, and improved street cleaning.

Table 5.6 TMDL Summary for Shellfish Closures in the Back River Watershed (90th percentile)

Condemnation Area	Pollutant Identified	TMDL MPN/day	Waste Load Allocation MPN/day	Load Allocation MPN/day	Margin of Safety
54-20A Topping Creek	Fecal Bacteria	2.61E+10	1.57E+09	2.45E+10	Implicit
54-20B Cedar Creek	Fecal Bacteria	1.60E+10	9.60E+08	1.50E+10	Implicit
54-21C NW Branch Back River	Fecal Bacteria	8.64E+10	1.21E+10	7.43E+10	Implicit
54-21D Tabbs Creek	Fecal Bacteria	2.55E+10	4.85E+09	2.07E+10	Implicit
54-21E SW Branch Back River	Fecal Bacteria	1.13E+12	3.50E+11	7.80E+11	Implicit
54-21F Inlet #1	Fecal Bacteria	6.35E+09	8.89E+08	5.46E+09	Implicit
54-21G Harris River	Fecal Bacteria	2.46E+11	3.44E+10	2.12E+11	Implicit
54-21H Inlet#2	Fecal Bacteria	2.91E+09	3.49E+08	2.56E+09	Implicit
54-21H Wallace Creek	Fecal Bacteria	2.02E+10	2.42E+09	1.78E+10	Implicit
54-193A Front Cove	Fecal Bacteria	1.60E+10	1.76E+09	1.42E+10	Implicit
54-158 Long and Grunland Creek	Fecal Bacteria	6.20E+10	8.06E+09	5.39E+10	Implicit

Table 5.7 TMDL Summary for Recreation Use Impairments in the Back River Watershed.

Condemnation Area	Pollutant Identified	TMDL MPN/day	Waste Load Allocation MPN/day	Load Allocation MPN/day	Margin of Safety
VAT-C07E-01 Brick Kiln Creek and NW Branch Back River	<i>Enterococci</i>	2.40E+12	2.40E+12	3.36E+11	2.06E+12
(same as VAT-C07E-21)	Fecal Coliform*	8.64E+10	8.64E+10	1.21E+10	7.43E+10
VAT-C07E-02 & VAT-C07E-03 New Market Creek 1 and 2 and SW Branch Back River	<i>Enterococci</i>	1.83E+11	1.83E+11	5.67E+10	1.26E+11
Same as VAT-C07E-22	Fecal Coliform*	1.13E+12	1.13E+12	3.50E+11	7.80E+11

The iterative implementation of BMPs in the watershed has several benefits:

1. It enables tracking of water quality improvements following BMP implementation through follow-up stream monitoring;
2. It provides a measure of quality control, given the uncertainties inherent in computer simulation modeling;
3. It provides a mechanism for developing public support through periodic updates on BMP implementation and water quality improvements;
4. It helps ensure that the most cost effective practices are implemented first; and
5. It allows for the evaluation of the adequacy of the TMDL in achieving water quality standards.

Watershed stakeholders will have opportunity to participate in the development of the TMDL implementation plan. While specific goals for BMP implementation will be established as part of the implementation plan development, the following stage 1 scenarios are targeted at controllable, anthropogenic bacteria sources and can serve as starting points for targeting BMP implementation activities.

6.2 Stage 1 Scenarios

The goal of the stage 1 scenarios is to reduce the bacteria loadings from controllable sources (excluding wildlife) such that violations of the single sample maximum criterion (235 cfu/100mL) are less than 10 percent.

6.3 Link to Ongoing Restoration Efforts

Implementation of this TMDL will contribute to on-going water quality improvement efforts aimed at restoring water quality in the Chesapeake Bay. Several BMPs known to be effective in controlling bacteria have also been identified for implementation as part of the Tributary Strategy for the Chesapeake Bay small coastal basins. For example, management of on-site waste management systems, management of livestock and manure, and pet waste management are among the components of the strategy described under nonpoint source implementation mechanisms. Up-to-date information on the tributary strategy implementation process can be found at the tributary strategy web site under <http://www.snr.state.va.us/Initiatives/TributaryStrategies/ChesapeakeBay.cfm>.

6.4 Reasonable Assurance for Implementation

6.4.1 Follow-Up Monitoring

Following the development of the TMDL, the Department of Environmental Quality (DEQ) will make every effort to continue to monitor the impaired stream in accordance with its ambient monitoring program. DEQ's Ambient Watershed Monitoring Plan for conventional pollutants calls for watershed monitoring to take place on a rotating basis, bi-monthly for two consecutive years of a six-year cycle. In accordance with [DEQ Guidance Memo No. 03-2004](#), during periods of reduced resources, monitoring can temporarily discontinue until the TMDL staff determines that implementation measures to address the source(s) of impairments are being installed. Monitoring can resume at the start of the following fiscal year, next scheduled monitoring station rotation, or where deemed necessary by the regional office or TMDL staff, as a new special study.

The purpose, location, parameters, frequency, and duration of the monitoring will be determined by the DEQ staff, in cooperation with DCR staff, the Implementation Plan Steering Committee and local stakeholders. Whenever possible, the location of the follow-up monitoring station(s) will be the same as the listing station. At a minimum, the monitoring station must be representative of the original impaired segment. The details of the follow-up monitoring will be outlined in the Annual Water Monitoring Plan prepared by each DEQ Regional Office. Other agency personnel, watershed stakeholders, etc. may provide input on the Annual Water Monitoring Plan. These recommendations must be made to the DEQ regional TMDL coordinator by September 30 of each year.

DEQ staff, in cooperation with DCR staff, the Implementation Plan Steering Committee and local stakeholders, will continue to use data from the ambient monitoring stations to evaluate reductions in pollutants ("water quality milestones" as established in the IP), the effectiveness of the TMDL in attaining and maintaining water quality standards, and the success of implementation efforts.

Recommendations may then be made, when necessary, to target implementation efforts in specific areas and continue or discontinue monitoring at follow-up stations.

In some cases, watersheds will require monitoring above and beyond what is included in DEQ's standard monitoring plan. Ancillary monitoring by citizens', watershed groups, local government, or universities is an option that may be used in such cases. An effort should be made to ensure that ancillary monitoring follows established QA/QC guidelines in order to maximize compatibility with DEQ monitoring data. In instances where citizens' monitoring data is not available and additional monitoring is needed to assess the effectiveness of targeting efforts, TMDL staff may request of the monitoring managers in each regional office an increase in the number of stations or monitor existing stations at a higher frequency in the watershed. The additional monitoring beyond the original bimonthly single station monitoring will be contingent on staff resources and available laboratory budget. More information on citizen monitoring in Virginia and QA/QC guidelines is available at <http://www.deq.virginia.gov/cmonitor/>.

To demonstrate that the watershed is meeting water quality standards in watersheds where corrective actions have taken place (whether or not a TMDL or TMDL Implementation Plan has been completed), DEQ must meet the minimum data requirements from the original listing station or a station representative of the originally listed segment. The minimum data requirement for conventional pollutants (bacteria, dissolved oxygen, etc) is bimonthly monitoring for two consecutive years. For biological monitoring, the minimum requirement is two consecutive samples (one in the spring and one in the fall) in a one year period.

6.4.2 Regulatory Framework

While section 303(d) of the Clean Water Act and current EPA regulations do not require the development of TMDL implementation plans as part of the TMDL process, they do require reasonable assurance that the load and wasteload allocations can and will be implemented. EPA also requires that all new or revised National Pollutant Discharge Elimination System (NPDES) permits must be consistent with the TMDL WLA pursuant to 40 CFR §122.44 (d)(1)(vii)(B). All such permits should be submitted to EPA for review.

Additionally, Virginia's 1997 Water Quality Monitoring, Information and Restoration Act (the "Act") directs the State Water Control Board to "develop and implement a plan to achieve fully supporting status for impaired waters" (Section 62.1-44.19.7). The Act also establishes that the implementation plan shall include the date of expected achievement of water quality objectives, measurable goals, corrective actions necessary and the associated costs, benefits and environmental impacts of addressing the impairments. EPA outlines the minimum elements of an approvable implementation plan in its 1999 "Guidance for Water Quality-Based Decisions: The TMDL Process." The listed elements include implementation actions/management measures, timelines, legal or regulatory controls, time required to attain water quality standards, monitoring plans and milestones for attaining water quality standards.

For the implementation of the WLA component of the TMDL, the Commonwealth intends to utilize the Virginia NPDES (VPDES) program, which typically includes consideration of the WQMIRA requirements during the permitting process. Requirements of the permit process should not be duplicated in the TMDL process, and with the exception of stormwater related permits, permitted sources are not usually addressed during the development of a TMDL implementation plan.

For the implementation of the TMDL's LA component, a TMDL implementation plan addressing at a minimum the WQMIRA requirements will be developed. An exception are the municipal separate storm sewer systems (MS4s) which are both covered by NPDES permits and expected to be included in TMDL implementation plans, as described in the stormwater permit section below.

Watershed stakeholders will have opportunities to provide input and to participate in the development of the TMDL implementation plan. Regional and local offices of DEQ, DCR, and other cooperating agencies are technical resources to assist in this endeavor.

In response to a Memorandum of Understanding (MOU) between EPA and DEQ, DEQ also submitted a draft Continuous Planning Process to EPA in which DEQ commits to regularly updating the WQMPs. Thus, the WQMPs will be, among other things, the repository for all TMDLs and TMDL implementation plans developed within a river basin. DEQ staff will present both EPA-approved TMDLs and TMDL implementation plans to the State Water Control Board for inclusion in the appropriate Water Quality Management Plan (WQMP), in accordance with the Clean Water Act's Section 303(e) and Virginia's Public Participation Guidelines for Water Quality Management Planning.

DEQ staff will also request that the SWCB adopt TMDL WLAs as part of the Water Quality Management Planning Regulation (9VAC 25-720), except in those cases when permit limitations are equivalent to numeric criteria contained in the Virginia Water Quality Standards, such as is the case for bacteria. This regulatory action is in accordance with §2.2-4006A.4.c and §2.2-4006B of the Code of Virginia. SWCB actions relating to water quality management planning are described in the public participation guidelines referenced above and can be found on DEQ's web site under <http://www.deq.state.va.us/tmdl/pdf/ppp.pdf>

6.4.3 Stormwater Permits

DEQ and DCR coordinate separate State programs that regulate the management of pollutants carried by storm water runoff. DEQ regulates storm water discharges associated with "industrial activities", while DCR regulates storm water discharges from construction sites, and from municipal separate storm sewer systems (MS4s).

EPA approved DCR's VPDES storm water program on December 30, 2004. DCR's regulations became effective on January 29, 2005. DEQ is no longer the regulatory agency responsible for administration and enforcement of the VPDES MS4 and construction storm water permitting programs. More information is available on DCR's web site through the following link: <http://www.dcr.virginia.gov/sw/vsmp>.

It is the intention of the Commonwealth that the TMDL will be implemented using existing regulations and programs. One of these regulations is DCR's Virginia Stormwater Management Program (VSMP) Permit Regulation (4 VAC 50-60-10 et. seq). Section 4VAC 50-60-380 describes the requirements for stormwater discharges. Also, federal regulations state in 40 CFR §122.44(k) that NPDES permit conditions may consist of "Best management practices to control or abate the discharge of pollutants when:...(2) Numeric effluent limitations are infeasible,...".

Many parts of the Back River watershed are covered by one of three VPDES permits for Phase II Virginia Stormwater Management Program (VSMP) permits. These are VAR040028 for York County, VAR040024 for the City of Poquoson and VAR040092 for the NASA Research Facility at Langley Air Force Base. The City of Hampton has a storm water general permit VA0088633 with the effective date of 03/08/2001 through 03/08/2006. All are for small municipal separate storm sewer systems (MS4s). These permits were issued on 12/09/2002. The effective date of coverage is five years. The permits state, under Part II.A., that the "permittee must develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and the State Water Control Law."

The permit also contains a TMDL clause that states: "If a TMDL is approved for any waterbody into which the small MS4 discharges, the Board will review the TMDL to determine whether the TMDL includes requirements for control of stormwater discharges. If discharges from the MS4 are not meeting the TMDL allocations, the Board will notify the permittee of that finding and may require that the Stormwater Management Program required in Part II be modified to implement the TMDL within a timeframe consistent with the TMDL." ("Board" means the Soil and Water Conservation Board)

For MS4/VSMP general permits, the Commonwealth expects the permittee to specifically address the TMDL wasteload allocations for stormwater through the implementation of programmatic BMPs. BMP effectiveness would be determined through ambient in-stream monitoring. This is in accordance with recent EPA guidance (EPA Memorandum on TMDLs and Stormwater Permits, dated November 22, 2002). If future monitoring indicates no improvement in stream water quality, the permit could require the MS4 to expand or better tailor its stormwater management program to achieve the TMDL wasteload allocation. However, only failing to implement the programmatic BMPs identified in the modified stormwater management program would be considered a violation of the permit. DEQ acknowledges that it may not be possible to meet the existing water quality standard because of the wildlife issue associated with a number of bacteria TMDLs (see section 7.4.5 below). At some future time, it may therefore become necessary to investigate the stream's use designation and adjust the water quality criteria through a Use Attainability Analysis. Any changes to the TMDL resulting from water quality standards change in any tributary of the Poquoson River watershed would be reflected in the permit.

Wasteload allocations for stormwater discharges from storm sewer systems covered by a MS4 permit will be addressed in TMDL implementation plans. An implementation plan will identify types of

corrective actions and strategies to obtain the wasteload allocation for the pollutant causing the water quality impairment. Permittees need to participate in the development of TMDL implementation plans since recommendations from the process may result in modifications to the stormwater management plan in order to meet the TMDL.

Additional information on Virginia's Stormwater Management program and a downloadable menu of Best Management Practices and Measurable Goals Guidance can be found at <http://www.dcr.virginia.gov/sw/stormwat.htm>.

6.4.4 Implementation Funding Sources

Cooperating agencies, organizations and stakeholders must identify potential funding sources available for implementation during the development of the implementation plan in accordance with the "Virginia Guidance Manual for Total Maximum Daily Load Implementation Plans". Potential sources for implementation may include the U.S. Department of Agriculture's Conservation Reserve Enhancement and Environmental Quality Incentive Programs, EPA Section 319 funds, the Virginia State Revolving Loan Program, Virginia Agricultural Best Management Practices Cost-Share Programs, the Virginia Water Quality Improvement Fund, tax credits and landowner contributions. The TMDL Implementation Plan Guidance Manual contains additional information on funding sources, as well as government agencies that might support implementation efforts and suggestions for integrating TMDL implementation with other watershed planning efforts.

6.4.5 Attainability of Primary Contact Recreation Use

In some streams for which TMDLs have been developed, water quality modeling indicates that even after removal of all bacteria sources (other than wildlife), the stream will not attain standards under all flow regimes at all times. These streams may not be able to attain standards without some reduction in wildlife load.

With respect to these potential reductions in bacteria loads attributed to wildlife, Virginia and EPA are not proposing the elimination of wildlife to allow for the attainment of water quality standards. However, if bacteria levels remain high and localized overabundant populations of wildlife are identified as the source, then measures to reduce such populations may be an option if undertaken in consultation with the Department of Game and Inland Fisheries (DGIF) or the United States Fish and Wildlife Service (USFWS). Additional information on DGIF's wildlife programs can be found at http://www.dgif.virginia.gov/hunting/va_game_wildlife/. While managing such overpopulations of wildlife remains as an option to local stakeholders, the reduction of wildlife or changing a natural background condition is not the intended goal of a TMDL.

To address the overall issue of attainability of the primary contact criteria, Virginia proposed during its latest triennial water quality standards review a new "secondary contact" category for protecting the recreational use in state waters. On March 25, 2003, the Virginia State Water Control Board adopted

criteria for “secondary contact recreation” which means “a water-based form of recreation, the practice of which has a low probability for total body immersion or ingestion of waters (examples include but are not limited to wading, boating and fishing)”. These new criteria became effective on February 12, 2004 and can be found at <http://www.deq.virginia.gov/wqs/rule.html>.

In order for the new criteria to apply to a specific stream segment, the primary contact recreational use must be removed. To remove a designated use, the state must demonstrate 1) that the use is not an existing use, 2) that downstream uses are protected, and 3) that the source of contamination is natural and uncontrollable by effluent limitations and by implementing cost-effective and reasonable best management practices for nonpoint source control (9 VAC 25-260-10). This and other information is collected through a special study called a Use Attainability Analysis (UAA). All site-specific criteria or designated use changes must be adopted as amendments to the water quality standards regulations. Watershed stakeholders and EPA will be able to provide comment during this process. Additional information can be obtained at <http://www.deq.virginia.gov/wqs/WQS03AUG.pdf>.

The process to address potentially unattainable reductions based on the above is as follows: First is the development of a stage 1 scenario such as those presented previously in this chapter. The pollutant reductions in the stage 1 scenario are targeted primarily at the controllable, anthropogenic bacteria sources identified in the TMDL, setting aside control strategies for wildlife except for cases of nuisance populations. During the implementation of the stage 1 scenario, all controllable sources would be reduced to the maximum extent practicable using an iterative approach described in the implementation plan. DEQ will re-assess water quality in the stream during and subsequent to the implementation of the stage 1 scenario to determine if the water quality standard is attained. This effort will also evaluate if the modeling assumptions were correct. If water quality standards are not being met, and no additional cost-effective and reasonable best management practices can be identified, a UAA may be initiated with the goal of re-designating the stream for secondary contact recreation.

7.0. Public Participation

During development of the TMDL for the Back River watershed, public involvement was encouraged through a public participation process that included public meetings and stakeholder meetings.

The first public meeting was held on September 14, 2005. A basic description of the TMDL process and the agencies involved was presented and a discussion was held regarding the source assessment input, bacterial source tracking, and model results. This meeting was followed by development of the final draft TMDL and a review by the stakeholders. These comments and the draft report were discussed at a meeting comprised of representatives from the three local governments, the Hampton Roads Planning District Commission and responsible state agencies on November 16, 2005. Input from these meetings was utilized in the development of the TMDL.

The second public meeting where the TMDL load allocations were presented was held on March 23, 2006. The results of the draft TMDL were presented and discussed.

8.0 Glossary

303(d). A section of the Clean Water Act of 1972 requiring states to identify and list water bodies that do not meet the states' water quality standards.

Allocations. That portion of receiving water's loading capacity attributed to one of its existing or future pollution sources (nonpoint or point) or to natural background sources. (A wasteload allocation [WLA] is that portion of the loading capacity allocated to an existing or future point source, and a load allocation [LA] is that portion allocated to an existing or future nonpoint source or to natural background levels. Load allocations are best estimates of the loading, which can range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting loading.)

Ambient water quality. Natural concentration of water quality constituents prior to mixing of either point or nonpoint source load of contaminants. Reference ambient concentration is used to indicate the concentration of a chemical that will not cause adverse impact on human health.

Anthropogenic. Pertains to the [environmental] influence of human activities.

Bacteria. Single-celled microorganisms. Bacteria of the coliform group are considered the primary indicators of fecal contamination and are often used to assess water quality.

Bacterial source tracking (BST). A collection of scientific methods used to track sources of fecal contamination.

Best management practices (BMPs). Methods, measures, or practices determined to be reasonable and cost-effective means for a landowner to meet certain, generally nonpoint source, pollution control needs. BMPs include structural and nonstructural controls and operation and maintenance procedures.

Clean Water Act (CWA). The Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972), Public Law 92-500, as amended by Public Law 96-483 and Public Law 97-117, 33 U.S.C. 1251 et seq. The Clean Water Act (CWA) contains a number of provisions to restore and maintain the quality of the nation's water resources. One of these provisions is section 303(d), which establishes the TMDL program.

Concentration. Amount of a substance or material in a given unit volume of solution; usually measured in milligrams per liter (mg/L) or parts per million (ppm).

Contamination. The act of polluting or making impure; any indication of chemical, sediment, or biological impurities.

Cost-share program. A program that allocates project funds to pay a percentage of the cost of constructing or implementing a best management practice. The remainder of the costs is paid by the producer(s).

Critical condition. The critical condition can be thought of as the "worst case" scenario of environmental conditions in the waterbody in which the loading expressed in the TMDL for the pollutant of concern will continue to meet water quality standards. Critical conditions are the combination of environmental factors (e.g., flow, temperature, etc.) that results in attaining and maintaining the water quality criterion and has an acceptably low frequency of occurrence.

Designated uses. Those uses specified in water quality standards for each waterbody or segment whether or not they are being attained.

Domestic wastewater. Also called sanitary wastewater, consists of wastewater discharged from residences and from commercial, institutional, and similar facilities.

Drainage basin. A part of a land area enclosed by a topographic divide from which direct surface runoff from precipitation normally drains by gravity into a receiving water. Also referred to as a watershed, river basin, or hydrologic unit.

Existing use. Use actually attained in the waterbody on or after November 28, 1975, whether or not it is included in the water quality standards (40 CFR 131.3).

Fecal Coliform. Indicator organisms (organisms indicating presence of pathogens) associated with the digestive tract.

Geometric mean. A measure of the central tendency of a data set that minimizes the effects of extreme values.

GIS. Geographic Information System. A system of hardware, software, data, people, organizations and institutional arrangements for collecting, storing, analyzing and disseminating information about areas of the earth. (Dueker and Kjerne, 1989)

Infiltration capacity. The capacity of a soil to allow water to infiltrate into or through it during a storm.

Interflow. Runoff that travels just below the surface of the soil.

Loading, Load, Loading rate. The total amount of material (pollutants) entering the system from one or multiple sources; measured as a rate in weight per unit time.

Load allocation (LA). The portion of a receiving waters loading capacity attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading, which can range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting the loading. Wherever possible, natural and nonpoint source loads should be distinguished (40 CFR 130.2(g)).

Loading capacity (LC). The greatest amount of loading a water body can receive without violating water quality standards.

Margin of safety (MOS). A required component of the TMDL that accounts for the uncertainty about the relationship between the pollutant loads and the quality of the receiving water body (CWA section 303(d)(1)(C)). The MOS is normally incorporated into the conservative assumptions used to develop TMDLs (generally within the calculations or models) and approved by EPA either individually or in state/EPA agreements. If the MOS needs to be larger than that which is allowed through the conservative assumptions, additional MOS can be added as a separate component of the TMDL (in this case, quantitatively, a TMDL = LC = WLA + LA + MOS).

Mean. The sum of the values in a data set divided by the number of values in the data set.

Monitoring. Periodic or continuous surveillance or testing to determine the level of compliance with statutory requirements and/or pollutant levels in various media or in humans, plants, and animals.

Narrative criteria. Non-quantitative guidelines that describe the desired water quality goals.

Nonpoint source. Pollution that originates from multiple sources over a relatively large area. Nonpoint sources can be divided into source activities related to either land or water use including failing septic tanks, improper animal-keeping practices, forest practices, and urban and rural runoff.

Numeric targets. A measurable value determined for the pollutant of concern, which, if achieved, is expected to result in the attainment of water quality standards in the listed waterbody.

Point source. Pollutant loads discharged at a specific location from pipes, outfalls, and conveyance channels from either municipal wastewater treatment plants or industrial waste treatment facilities. Point sources can also include pollutant loads contributed by tributaries to the main receiving water waterbody or river.

Pollutant. Dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (CWA section 502(6)).

Pollution. Generally, the presence of matter or energy whose nature, location, or quantity produces undesired environmental effects. Under the Clean Water Act, for example, the term is defined as the man-made or man-induced alteration of the physical, biological, chemical, and radiological integrity of water.

Privately owned treatment works. Any device or system that is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a publicly owned treatment works.

Public comment period. The time allowed for the public to express its views and concerns regarding action by EPA or states (e.g., a Federal Register notice of a proposed rule-making, a public notice of a draft permit, or a Notice of Intent to Deny).

Publicly owned treatment works (POTW). Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature that is owned by a state or municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Raw sewage. Untreated municipal sewage.

Receiving waters. Creeks, streams, rivers, lakes, estuaries, ground-water formations, or other bodies of water into which surface water and/or treated or untreated waste are discharged, either naturally or in man-made systems.

Riparian areas. Areas bordering streams, lakes, rivers, and other watercourses. These areas have high water tables and support plants that require saturated soils during all or part of the year. Riparian areas include both wetland and upland zones.

Riparian zone. The border or banks of a stream. Although this term is sometimes used interchangeably with floodplain, the riparian zone is generally regarded as relatively narrow compared to a floodplain. The duration of flooding is generally much shorter, and the timing less predictable, in a riparian zone than in a river floodplain.

Runoff. That part of precipitation, snowmelt, or irrigation water that runs off the land into streams or other surface water. It can carry pollutants from the air and land into receiving waters.

Septic system. An on-site system designed to treat and dispose of domestic sewage. A typical septic system consists of a tank that receives waste from a residence or business and a drain field or subsurface absorption system consisting of a series of percolation lines for the disposal of the liquid effluent. Solids (sludge) that remain after decomposition by bacteria in the tank must be pumped out periodically.

Sewer. A channel or conduit that carries wastewater and storm water runoff from the source to a treatment plant or receiving stream. Sanitary sewers carry household, industrial, and commercial waste. Storm sewers carry runoff from rain or snow. Combined sewers handle both.

Slope. The degree of inclination to the horizontal. Usually expressed as a ratio, such as 1:25 or 1 on 25, indicating one unit vertical rise in 25 units of horizontal distance, or in a decimal fraction (0.04), degrees (2 degrees 18 minutes), or percent (4 percent).

Stakeholder. Any person with a vested interest in the TMDL development.

Surface area. The area of the surface of a waterbody; best measured by planimetry or the use of a geographic information system.

Surface runoff. Precipitation, snowmelt, or irrigation water in excess of what can infiltrate the soil surface and be stored in small surface depressions; a major transporter of nonpoint source pollutants.

Surface water. All water naturally open to the atmosphere (rivers, lakes, reservoirs, ponds, streams, impoundments, seas, estuaries, etc.) and all springs, wells, or other collectors directly influenced by surface water.

Topography. The physical features of a geographic surface area including relative elevations and the positions of natural and man-made features.

Total Maximum Daily Load (TMDL). The sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources and natural background, plus a margin of safety (MOS). TMDLs can be expressed in terms of mass per time, toxicity, or other appropriate measures that relate to a state's water quality standard.

VADEQ. Virginia Department of Environmental Quality.

VDH. Virginia Department of Health.

Virginia Pollutant Discharge Elimination System (NPDES). The national program for issuing, modifying, revoking and re-issuing, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of the Clean Water Act.

Wasteload allocation (WLA). The portion of a receiving waters' loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation (40 CFR 130.2(h)).

Wastewater. Usually refers to effluent from a sewage treatment plant. See also **Domestic wastewater**.

Wastewater treatment. Chemical, biological, and mechanical procedures applied to an industrial or municipal discharge or to any other sources of contaminated water to remove, reduce, or neutralize contaminants.

Water quality. The biological, chemical, and physical conditions of a waterbody. It is a measure of a waterbody's ability to support beneficial uses.

Water quality criteria. Levels of water quality expected to render a body of water suitable for its designated use, composed of numeric and narrative criteria. Numeric criteria are scientifically derived ambient concentrations developed by EPA or states for various pollutants of concern to protect human health and aquatic life. Narrative criteria are statements that describe the desired water quality goal. Criteria are based on specific levels of pollutants that would make the water harmful if used for drinking, swimming, farming, fish production, or industrial processes.

Water quality standard. Law or regulation that consists of the beneficial designated use or uses of a waterbody, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular waterbody, and an antidegradation statement.

Watershed. A drainage area or basin in which all land and water areas drain or flow toward a central collector such as a stream, river, or lake at a lower elevation.

WQIA. Water Quality Improvement Act.

9.0 Citations

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10.0 Appendices

Appendix A Growing Area 54: Shoreline Sanitary Survey and Condemnation Notices

Appendix B Supporting Documentation and Watershed Assessment

Appendix C Water Quality Data

Appendix D 1) Code of Virginia §62.1-194.1 Obstructing or contaminating state waters.

2) 33 CFR Volume 2, Parts 120 to 199. Revised as of July 1, 2000

Appendix A: Growing Area 54: 1) Shoreline Sanitary Survey

BACK RIVER

YORK COUNTY AND THE CITIES OF HAMPTON, NEWPORT NEWS AND POQUOSON

SHORELINE SANITARY SURVEY

Date: February 29, 2000

Survey Period: November 18, 1999 - February 17, 2000

Total Number of Properties Surveyed: 719

Surveyed By: J. E. Davis and J. D. Dickerson

SECTION A: GENERAL

This survey area extends from Reference Point 54 at the northwest mouth of Thorofare Creek to Reference Point 55 at Northend Point, including the Back River shoreline between these two points, Flat Gut, Bells Oyster Gut, Front Cove (High Cedar Creek), Back Cove, Long Creek, Fore Landing Creek, Northwest Branch (Watts Creek, Topping Creek, Cedar Creek, Brick Kiln Creek, Tabbs Creek), Southwest Branch (Tide Mill Creek, Newmarket Creek, Hampton Lake, Lynnhaven Lake), Harris River, Wallace Creek, Grunland Creek, Long Creek (Hawkins Pond, Floods Hole) and all of their tributaries. The survey boundary has been revised since the last survey. See map for current boundary.

The topography in this area varies in elevations from 5' or less along the shoreline to a maximum of 25' near the western edge of the survey boundary. The economy is based mainly on local commerce, various industries, the military and recreational activity. The population is heavily concentrated in the sewered sections and somewhat evenly dispersed throughout the rest of the watershed.

Meteorological data indicated that .11" of rain fell November 18-30, 1.31" in December, 3.18" in January and .57" February 1-17 for a total rainfall of 5.17" for the survey period.

The current restrictions on shellfish harvesting are Condemned Shellfish Area #21, Back River, revised 28 June 1999, Condemned Shellfish Area #158, Back River: Long and Grunland Creeks, revised 8 July 1997 and Condemned Shellfish Area #193, Back River: Front Cove, revised 28 June 1999. Copies of the current condemnation notices and maps are attached to the back of this report.

There were numerous significant properties from the previous survey that were located outside of the revised survey boundary that were determined not to have a direct impact on this particular watershed. Industrial waste properties #378 (Keener's Used Automobile Parts), #379 (Apples Automobile Parts), #380 (Ferguson Construction Company), #381 (Gibson Equipment), #385 (Coxton Automobile Shop) and solid waste dumpsite #763 (Sanifill of Virginia). A meeting with the City of Poquoson's engineer and planner revealed that the entire city would be sewerred by October of 2000. The local environmental health specialist and the shoreline survey supervisor felt that it was not feasible to survey those areas still on septic tanks when sewerage facilities would be available in October.

Information in this report is gathered by and primarily for the use of the Division of Shellfish Sanitation, Virginia Department of Health, in order to fulfill its responsibilities of shellfish growing area supervision and classification. However, the data is made available to various agencies participating in shellfish program coordinated activities or other interested parties.

Report copies are provided to the local health department for corrective action of deficiencies listed on the summary page in Sections B.2. and B.3. and the Department of Environmental Quality for possible action at the properties listed on the summary page in Sections B.1., C.1. and C.2. The Division of Soil and Water Conservation is provided information on possible sources of animal pollution found in Section E.

This report lists only those properties which have a sanitary deficiency or other environmental significance. **"DIRECT"** indicates that the significant activity or deficiency has a direct impact on shellfish waters. Individual field forms with full information on properties listed in this report are on file in the Richmond office of the Division of Shellfish Sanitation and are available for reference until superseded by a subsequent resurvey of the area.

SECTION B: SEWAGE POLLUTION SOURCES
SEWAGE TREATMENT WORKS

31. **DIRECT** - [REDACTED]

[REDACTED]. Dwelling- brick 1 story with beige trim. 1 person. Observed onsite was a Norweco Singulair package treatment system. Treatment consists of an extended aeration activated sludge process with surface mixer, primary and secondary sedimentation tanks and Sanuril tablet chlorination feeder system. Final effluent discharges to Billy Woods Canal which empties into the head of Tide Mill Creek. Owner has service contract with Wastewater Solutions, Incorporated, in Salem. Solids are pumped and hauled by a septic tank hauling service. The Department of Environmental Quality, Tidewater Regional Office (DEQ/TRO) did not have a recent inspection report on this facility

71. **DIRECT** - [REDACTED]

[REDACTED]. Dwelling- brick 2 story with white trim and black shutters. 1 person. Observed onsite was a Norweco Singulair package treatment system. Treatment consists of an extended aeration activated sludge process with surface mixer, primary and secondary sedimentation tanks and a Sanuril tablet chlorination feeder system. Final effluent discharges to Wallace Creek, a tributary of the Back River. Solids are pumped and hauled by a septic tank hauling service. Has Permit #VAG403006 from the DEQ/TRO. The most recent DEQ/TRO inspection report is attached.

ONSITE SEWAGE DEFICIENCIES

2. NO FACILITIES, **DIRECT** - [REDACTED]

[REDACTED] 23662 [REDACTED]

[REDACTED]. Public boat landing. No contact. Sanitary Notice issued 2-7-00 to field #A1A.

3. NO FACILITIES, **DIRECT** - [REDACTED]

[REDACTED] 23662. Owner: [REDACTED] n. Private boat dock. 3 employees. Sanitary Notice issued 2-7-00 to field #A2A.

8. NO FACILITIES, **DIRECT** - [REDACTED]

[REDACTED], [REDACTED]. Private pier. No contact. Sanitary Notice issued 2-7-00 to field #A3A.

10. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] 23693. Dwelling- brick and tan aluminum siding
2 story with tan trim and dark brown shutters. No contact.
Owner using a sump pump to pump effluent from septic tank onto
ground. Sanitary Notice issued 12-10-99 to field #A101.
11. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED]. Owner [REDACTED]
[REDACTED] 369. Dwelling- white vinyl siding 2
story with dark brown trim. 1 person. Effluent erupting onto
ground from a crack in the influent line from the house to the
septic tank. Also there was a crack in the septic tank lid.
Sanitary Notice issued 12-10-99 to field #A95.
12. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED], [REDACTED]. Dwelling- white aluminum siding
1 $\frac{3}{4}$ story with green shutters and a front screened porch. 1
person. Distribution box lid cracked and replaced with a sheet
of plywood. Sanitary Notice issued 12-6-99 to field #A89.
14. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED] [REDACTED]. Dwelling- gold
aluminum siding 2 story with white trim. No contact. Effluent
from greywater tank overflowing onto ground. Sanitary Notice
issued 12-16-99 to field #A105.
15. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] [REDACTED]. Dwelling- white frame 1 story with green
shutters. 4 persons. Effluent erupting from septic tank onto
ground. Sanitary Notice issued 12-6-99 to field #A91.
16. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] Dwelling- brick 1 story with white and dark
brown trim. No contact. Unapproved metal lid over septic
tank; and

CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) -Laundry
wastes are pumped from a greywater tank through a sump pump and
garden hose into a backyard ditch. Sanitary Notice issued 12-
6-99 to field #A92.

17. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] Dwelling- brick 1 story with white trim.
2 persons. Septic tank lid cracked, exposing contents.
Sanitary Notice issued 11-22-99 to field #A5.

19. CONTRIBUTES POLLUTION [REDACTED]
[REDACTED]. Dwelling- beige vinyl siding 1 story
apartments with white trim and black shutters. 1 person.
Septic tank lid cracked, exposing contents. Sanitary Notice
issued 11-30-99 to field #A49.
20. CONTRIBUTES POLLUTION - Location: 3045 Hampton Highway,
Yorktown 23693. [REDACTED]
[REDACTED], Yorktown. Dwelling- white frame 1½
story. No contact. Septic tank lid cracked, exposing
contents. Sanitary Notice issued 12-2-99 to field #A72.
22. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED] Dwelling-
white frame 1 story with green trim. No contact. Laundry and
kitchen wastes discharge through an underground pipe into a
shallow ditch. Sanitary Notice issued 1-18-00 to field #A189.
23. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] Dwelling- white aluminum siding 1 story.
No contact. Owner using a sump pump and a ½" garden hose to
pump effluent from septic tank onto ground. Sanitary Notice
issued 2-7-00 to field #494.
24. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED] Dwelling- white
aluminum siding and frame 1¾ story with black trim. 1 person.
Laundry wastes discharge through a 1" black rubber hose into a
2" metal pipe onto ground. Sanitary Notice issued 1-18-00 to
field #A169.
26. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] Agricultural- horse
stables. 3 persons. Effluent seeping from a crack in the 4"
cast iron sewer pipe from the stables to the septic tank.
Sanitary Notice issued 2-23-00 to field #A-5A.
32. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] Dwelling- white aluminum
siding 1 story. No contact. Cracked lid on septic tank; and
- CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - Laundry
waste erupting from ground through a 2" white PVC pipe.
Sanitary Notice issued 2-7-00 to field #445.

34. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED] Dwelling- white aluminum siding 1¾ story with green shutters. No contact. Laundry wastes discharge through a 2" white PVC pipe into a concrete drainage ditch. Sanitary Notice issued 12-7-99 to field #A115.
37. CONTRIBUTES POLLUTION - Occupant: [REDACTED]
[REDACTED] 20 employees. Effluent erupting from septic tank onto ground. Unapproved wooden lid on septic tank. Sanitary Notice issued 1-5-00 to field #334.
39. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED] Dwelling- brick 1 story with white trim.
1 person. Laundry waste discharges to ditch through a 2" metal pipe. Sanitary Notice issued 1-5-00 to field #330.
42. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED] Dwelling- brick 1 story with white trim and dark green shutters and awnings. 1 person. Grease trap lid cracked. Sanitary Notice issued 12-9-99 to field #A149.
43. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - Occupants: [REDACTED]
[REDACTED] Dwelling- white aluminum siding 1½ story with black shutters. 2 persons. Laundry wastes erupting from drywell onto ground. Sanitary Notice issued 12-8-99 to field #A146.
44. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED] Dwelling- white aluminum siding 1½ story. No contact. Laundry wastes discharge through a 2" white PVC pipe onto ground. Sanitary Notice issued 12-8-99 to field #A142.
45. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED] Dwelling- white aluminum siding 1½ story with black shutters. No contact. Laundry wastes discharge through a 2" grey PVC pipe into a shallow ditch. Sanitary Notice issued 12-8-99 to field #A141.

46. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED] Dwelling- brick 1 story with white trim. 1 person. Effluent erupting from grease trap onto ground. Sanitary Notice issued 12-13-99 to field #292.
47. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) [REDACTED]
[REDACTED] Dwelling- brick 1 story with white trim. 2 persons. Laundry waste drains to shallow ditch beside house. Sanitary Notice issued 12-13-99 to field #277.
48. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - Location:
[REDACTED]. Dwelling- green asbestos siding 1½ story with white trim. 2 persons. Laundry waste drains to roadside ditch in front yard. Sanitary Notice issued 12-13-99 to field #279.
49. CONTRIBUTES POLLUTION [REDACTED]
[REDACTED] Dwelling- khaki vinyl siding 1½ story with white trim and green shutters. No contact. Effluent erupting from drainfield onto ground. Sanitary Notice issued 12-13-99 to field #283.
50. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] Business- recycling station for paper, cardboard and scrap metals. 8 employees. Effluent erupting from septic tank onto ground. Cracked lid on septic tank. Sanitary Notice issued 1-13-00 to field #397.
51. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] Business- automotive repair and towing. 10 employees. Effluent erupting from drainfield onto ground. Sanitary Notice issued 1-13-00 to field #388.
56. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED]. Dwelling- cream aluminum siding 1 story with white trim and black shutters. No contact. Laundry waste drains into gutter pipe through a 2" white PVC pipe. Sanitary Notice issued 12-8-99 to field #231.

57. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) [REDACTED]
[REDACTED]. Dwelling- white aluminum siding 1 story.
No contact. Broken lid on grease trap. Sanitary Notice issued
12-8-99 to field #202.
65. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] Dwelling- white aluminum siding 1 story
with dark green shutters. No contact. Effluent erupting from
septic tank onto ground. Sanitary Notice issued 11-23-99 to
field #60.
67. CONTRIBUTES POLLUTION - Location [REDACTED]
[REDACTED]. Dwelling- white vinyl siding 1½ story with
green shutters. 1 person. Broken lid on septic tank.
Sanitary Notice issued 11-22-99 to field #33.
72. CONTRIBUTES POLLUTION [REDACTED]
[REDACTED]. Dwelling- yellow vinyl siding 1½ story with
brown trim. No contact. Effluenterupting from a crack in the
4" white PVC sewer pipe from the house to the septic tank.
Sanitary Notice issued 11-22-99 to field #51.
73. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] Dwelling- light green vinyl siding 1 story
with white trim. No contact. Broken lid on septic tank.
Sanitary Notice issued 11-23-99 to field #50.
74. CONTRIBUTES POLLUTION - [REDACTED]
[REDACTED] Dwelling- light green vinyl
siding 1 story with white trim and black shutters. 1 person.
Effluent erupting from drainfield onto ground. Sanitary Notice
issued 11-22-99 to field #46.
77. CONTRIBUTES POLLUTION (Kitchen or Laundry Wastes) - [REDACTED]
[REDACTED] Dwelling- light brown
frame 1 story with whitetrim. 1 person. Laundry waste
erupting from grease trap drainline onto ground. Sanitary
Notice issued 11-18-99 to field #9.

POTENTIAL POLLUTION

12. [REDACTED].
Dwelling- white aluminum siding 1 $\frac{3}{4}$ story with green shutters and a front screened porch. 1 person. Occupant stated that during heavy periods of rain the septic tank overflows onto ground. No evidence of discharge at time of inspection.
13. [REDACTED].
Dwelling- beige vinyl siding 1 story with white trim and dark brown trim. 4 persons. Occupant stated that during heavy periods of rain septic tank overflows onto ground. No evidence of discharge at time of inspection.
18. [REDACTED]. Dwelling- brick and beige vinyl siding 2 story with dark brown and white trim. No contact. Observed onsite were approximately 9 junked cars and trucks, boats, engine parts and scrap metal scattered throughout a $\frac{1}{4}$ acre.
29. Location: [REDACTED]. Dwelling- white and brown frame 1 $\frac{1}{2}$ story. No contact. Observed onsite were approximately 40 junked cars and 2 abandoned house trailers.
40. Location: [REDACTED]. Dwelling- white frame 1 story. No contact. A 2" black rubber hose was observed exiting window of house into ground. No evidence of discharge at time of inspection.

SECTION C: NON-SEWAGE POLLUTION SITES

INDUSTRIAL WASTES

1. **DIRECT** - [REDACTED].
[REDACTED]. Business- shellfish shucker packer (VA-733SP) and crab dealer (VA-197C). 6 employees. Washdown wastes and floor drains discharge into Front Cove. VPDES permit on file with the Department of Environmental Quality, Tidewater Regional Office (DEQ/TRO).

5. **DIRECT** - [REDACTED]
[REDACTED] Business- crab dealer (VA-196C).
5 employees. Washdown wastes and floor drains discharge into
the Back River. VPDES permit on file with the DEQ/TRO.

6. **DIRECT** - Occupant: [REDACTED]
[REDACTED]. Business- crab dealer
(VA-58C). 20 employees. Washdown wastes and floor drains
discharge into the Back River. VPDES permit on file with the
DEQ/TRO.

7. **DIRECT** - [REDACTED]
[REDACTED] 85233-2641.
Business: shellfish shucker packer (VA-350SP). 8 employees.
Washdown wastes and floor drains discharge into the Back River.
Has VPDES permit #VAG523002 from the DEQ/TRO.

9. **DIRECT** - [REDACTED]
[REDACTED].
Business- shellfish shucker packer (VA-388SP). 5 employees.
Washdown wastes and floor drains discharge into the Back River.
Has VPDES permit #VAG523003 from the DEQ/TRO.

21. **DIRECT** - [REDACTED]
[REDACTED] The Big Bethel WTP
produces an average of 113,000 gallons of wastewater per day
from filter backwash and primary and secondary sedimentation
basin sludge. Wastewater flows to a concrete lagoon that
provides storage and thickening. Lagoon decant is discharged
to Brick Kiln Creek. Has VPDES permit #VA0005924 from the
DEQ/TRO.

25. **DIRECT** - [REDACTED]
[REDACTED] A
mixture of stormwater and various process waters discharge
through 13 separate outfalls into portions of Tides Mill Creek,
Tabbs Creek, Brick Kiln Creek, the Southwest Branch and the
Northwest Branch of the Back River. Has VPDES permit
#VA0024741 from the DEQ/TRO. This facility is also a Superfund
Cleanup Site with 6 sites listed on the National Priorities
List (NPL) administered by the Environmental Protection Agency
(EPA). The cleanup of 3 sites has already been completed with
work presently ongoing at the remaining 3 sites.

27. **DIRECT** - [REDACTED].
[REDACTED].
Approximately 6,000 employees. The subject facility discharges aircraft wash water to the Back River, the cooling tower discharges to the Back River and Tide Mill Creek and stormwater runoff discharges through 25 identified outfalls to the Back River, Tide Mill Creek and Tabbs Creek. Has VPDES permit #VA0083194 from the DEQ/TRO. This facility is also a Superfund Cleanup Site with 48 sites listed on the NPL administered by the EPA. As of December 1999 22 sites have been cleaned up and closed. Work is presently ongoing at the remaining 26 locations. Also noted onsite were 92 above ground fuel tanks varying in capacity from 250 gallons to 621,650 gallons.
30. Occupant: [REDACTED]
[REDACTED] Business- used automotive parts. 1 employee. Present at time of survey was 1x200 gallon (gal.) used oil tank and 1x500 gal. gasoline tank without a berm. Antifreeze is stored in 50 gal. drums inside building.
35. Occupant: [REDACTED]
[REDACTED] Owner: Parklawn Memorial Park, Incorporated, 1929 Allen Parkway, Houston TX, 77019. 10 employees. Observed onsite was 1x500 gal. diesel fuel tank, 1x500 gal. gasoline tank, and 1x200 gal. kerosene tank all surrounded by a 1' concrete berm.
- 49A. **DIRECT** - [REDACTED]
[REDACTED] Business- concrete batch plant/asphalt plant. No contact. Washdown and process water and stormwater runoff discharge to an unnamed tributary of Newmarket Creek. Has Permit #VA0088528 from DEQ/TRO.
76. [REDACTED]
[REDACTED] Commercial marina. 6 employees. Observed onsite was 1x1100 gal. diesel tank, 2x500 gal. unleaded gasoline tanks and 1x800 gal. used oil tank inside a steel storage shed.

SOLID WASTE DUMPSITES

30. Occupant: [REDACTED]
[REDACTED]. Business- used automotive parts. 1 employee. Present at time of survey was a 5 acre lot filled with junk cars, car parts and engine parts.

Business: recycling station for paper, cardboard and scrap metals. 8 employees. Present at time of survey were large amounts of paper, cardboard, aluminum and scrap metals scattered throughout a 2.5 acre lot.

SECTION D: BOATING ACTIVITY

MARINAS

3.

. Private boat dock. 3 employees. 15 moorings available. Present at time of survey was 1 work boat. Boating services provided are fuel, water and electricity. There are no containers available for solid waste collection, sanitary facilities, boat holding tank pump-out facilities or portable toilet dump station facilities available at this location.

28.

79
slips/moorings and 78 dry storage spaces available. Boating services provided are fuel, electricity and water. Containers are available for solid waste collection. Sanitary facilities provided are 1 unisex commode and 1 unisex lavatory. Sewage disposal is to Hampton Roads Sanitation District Boat Harbor Plant (HRSDBHP). There are no portable toilet dump station facilities at this location. Boat holding tank pump-out facilities are available.

60.

.Commercial Marina. 8 employees. 87 slips/moorings available. Present at time of survey were 3 work boats and 23 pleasure boats under 26' and 8 work boats and 31 pleasure over 26'. Boating services provided are fuel, water, electricity, repair and an in-out ramp. Containers are available for solid waste collection. Sanitary facilities provided are 1 commode, 1 lavatory, 1 shower and 1 urinal for men; and 1 commode, 1 lavatory and 1 shower for women. Sewage disposal is to a septic tank with drainfield, which appeared to be in satisfactory condition at time of inspection. Portable toilet dump station facilities are provided. There are no boat holding tank pump-out facilities at this location.

64. [REDACTED] Private community pier. No contact. 10 slips/moorings available. Present at time of survey was 1 work boat under 26'. Electricity is the only boating service provided. There are no containers available for solid waste collection. Owner has an exemption to the requirement to provide onshore sanitary facilities, portable toilet dump station facilities and boat holding tank pump-out facilities at this location.

66. [REDACTED].
Commercial marina. 10 employees. 75 slips/moorings and 42 dry storage spaces available. Present at time of survey were 37 pleasure boats under 26' and 30 pleasure boats over 26' in wet storage; and in dry storage there were 42 pleasure boats under 26'. Boating services provided are electricity, water and repair. Containers are available for solid waste collection. Sanitary facilities provided are 1 commode, 1 lavatory, 1 shower and 1 urinal for men; and 2 commodes, 1 lavatory and 1 shower for women. Sewage disposal is to a septic tank with drainfield, which appeared to be in satisfactory condition at time of inspection. Portable toilet dump station facilities and boat holding tank pump-out facilities are provided at this location.

69. [REDACTED].
Commercial marina. 2 employees. 7 slips/moorings available. Present at time of survey were 4 pleasure boats under 26'. The only boating service provided is fuel. Solid waste containers are provided. Sanitary facilities include 1 commode and 1 lavatory for men. Sewage disposal is to a septic tank with drainfield, which appeared to be in satisfactory condition at time of inspection. There are no portable toilet dump station facilities or boat holding tank pump-out facilities at this location.

76. [REDACTED] Commercial marina. 6 employees. 80 slips/100 dry storage spaces available. Present at time of survey were 21 pleasure boats under 26' and 28 pleasure boats over 26' in wet storage; and in dry storage there were 86 pleasure boats under 26' and 9 pleasure boats over 26'. Boating services provided are fuel, electricity, water, repair and an in-out ramp.

Containers are available for solid waste collection. Sanitary facilities provided are 1 commode, 1 lavatory and 1 shower for men; and 2 commodes, 1 lavatory and 1 shower for women. Sewage disposal is to HRSDBHP. Portable toilet dump station facilities are provided. There are no boat holding tank pump-out facilities at this location.

OTHER PLACES WHERE BOATS ARE MOORED

1. [REDACTED]. Seafood processing plant. 6 employees. 10 moorings available. Present at time of survey were 10 work boats under 26'. Boating services provided are water, an in-out ramp and electricity. Containers are available for solid waste collection. Sanitary facilities provided are 1 commode and 1 lavatory for men; and 1 commode and 1 lavatory for women. Sewage disposal is to Hampton Roads Sanitation District York River Plant (HRSDYRP). There are no boat holding tank pump-out or portable toilet dump station facilities available at this location.
2. [REDACTED] Pubic ramp and dock. No contact. 20 moorings available. Present at time of survey were 3 work boats under 26'. The only boating service provided is two in-out ramps. Containers are available for solid waste collection. There are no sanitary facilities, boat holding tank pump-out facilities or portable toilet dump station facilities available at this location. (Bills Fish Dock and Messick Point public ramp and dock are now one facility. The City of Poquoson owns both facilities).
4. [REDACTED] Private yacht club. No contact. 10 moorings available. There were no boats present at time of survey. Boating services provided are water and electricity. Containers are available for solid waste collection. Sanitary facilities provided are 2 commodes, 1 urinal, 2 lavatories and 1 shower for men; and 1 commode and 1 lavatory for women. Sewage disposal is to HRSDYRP. Owners have an exemption to the requirement to provide boat holding tank pump-out facilities and portable dump station facilities at this location.

7. [REDACTED]
[REDACTED]. Private boat mooring facility. No contact. 30 moorings available. Present at time of survey were 5 work boats under 26' and 8 work boats over 26'. There are no boating services provided. Containers are available for solid waste collection. Sanitary facilities provided are 1 unisex commode and 2 lavatories. Sewage disposal is by HRSDYRP. There are no boat holding tank pump-out facilities or portable toilet dump station facilities available at this location.

8. [REDACTED]
[REDACTED]. Private pier. No contact. 6 moorings available. Present at time of survey were 2 work boats under 26' in wet storage and in dry storage there were 4 work boats over 26'. There are no boating services, containers for solid waste collection, sanitary facilities, boat holding tank pump-out facilities or portable toilet dump station facilities available at this location.

9. [REDACTED]
[REDACTED] No contact. 4 slips/moorings available. Present at time of survey were 4 work boats in dry storage under 26'. There are no boating services provided. Containers are available for solid waste collection. Sanitary facilities available are 1 privy for men. Sewage disposal is by pump and haul. Privy is used as a portable toilet dump station. There are no boat holding tank pump-out facilities provided at this location.

70. [REDACTED]
[REDACTED]. Private docking facility. No contact. 10 slips/moorings available. Present at time of survey were 6 pleasure boats under 26'. Water is the only boating service provided. Containers are available for solid waste collection. Sanitary facilities provided are 1 commode and 1 lavatory for men. Sewage disposal is to a septic tank with drainfield, which appeared to be in satisfactory condition at time of inspection. Owner has a variance to the requirements to provide onshore sanitary facilities and an exemption to the requirements to provide boat holding tank pump-out facilities. There are no portable toilet dump station facilities at this location.

UNDER SURVEILLANCE

6. [REDACTED] Private pier. 8 employees. 1 mooring available. There were no boats present at time of survey. The only boating service available is fuel. Containers are available for solid waste collection. Sanitary facilities provided are 1 commode and 1 lavatory for men; and 2 commodes and 1 lavatory for women. Sewage disposal is to HRSDYRP. There are no boat holding tank pump-out facilities or portable toilet dump station facilities available at this location.
68. [REDACTED] . Public boat ramp. No contact. There were no boats present at time of survey. The only boating service provided is an in-out ramp. Containers are available for solid waste collection. Sanitary facilities provided are 1 portable toilet for men and 1 portable toilet for women, which are serviced by Spivey Rentals. Toilets are used as dump station facilities. There are no boat holding tank pump-out facilities at this location.

SECTION E: CONTRIBUTES ANIMAL POLLUTION

26. [REDACTED] 3 persons. Present at time of survey were 50 horses in a fenced pasture. Horses don't have direct access to Tabbs Creek, but the lot does drain into a grated drain that is piped across to the creek. Manure disposal is unknown.
33. [REDACTED] Private wooded lot next to 48 Butler Farm Road. No contact. Present at time of survey were approximately 30 hunting dogs in pens. Manure disposal is unknown.
36. [REDACTED] Dwelling- white frame 1 story. 1 person. Present at time of survey were 35 horses in a fenced pasture 100' from Tide Mill Creek. Manure is composted and used as fertilizer.

38. Occupant: [REDACTED]
[REDACTED]. Public animal park. 6 employees. Present at time of survey were 8 sheep, 1 donkey, 5 pigs, 2 wolves, 2 bobcats, 4 foxes, 10 birds of prey, 25 rabbits, 9 goats, 6 cows, 3 horses and approximately 150 domestic fowl roaming free. Manure is composted and given away as fertilizer.
41. Location: [REDACTED]
[REDACTED] 1 person. Present at time of survey were 6 horses in fenced pasture 50' from Newmarket Creek. Manure is spread on fields and used as fertilizer.
52. **DIRECT** - Location [REDACTED]
[REDACTED]. Dwelling- gray 2 story concrete block. 2 persons. Present at time of survey were 15 horses, 12 goats, 20 cows and 6 mules with direct access to the Back River. Also present were approximately 200 domestic fowl that were free roaming and confined in pens. Manure is composted and spread on fields and pasture.
53. M [REDACTED]. Dwelling- brick 1½ story with white trim and beige shutters. 1 person. Present at time of survey were 10 horses in a fenced pasture 150' from the Back River. Manure is composted or given away as fertilizer.
54. [REDACTED]
[REDACTED] Dwelling- white stucco 1 story with 2 large red and white barns. 1 person. Present at time of survey were 5 horses and 3 peacocks in a fenced pasture 100' from a small cove on the Back River. Manure is composted and hauled away to be used as fertilizer.
55. [REDACTED]
[REDACTED]. Dwelling- brick 1 story with gray trim. 1 person. Present at time of survey were 10 horses, 1 goat, 1 pig, 15 geese, and 5 dogs in kennel. Horses have direct access to the Back River from the pasture. Manure is left on the ground.

58. Location: [REDACTED]
[REDACTED]
Dwelling- light brown aluminum siding and brick 1 story with green shutters. 2 persons. Present at time of survey were 20 horses in a fenced pasture. Manure is composted in a large container and offered as free fertilizer.
59. **DIRECT** - [REDACTED]
[REDACTED]
Cattle farm. 1 person. Present at time of survey were approximately 90 beef cows and 10 horses with direct access to the Back River. Manure is spread on the fields and pasture.
61. **DIRECT** - [REDACTED]
[REDACTED]
Dwelling- white aluminum siding and brick 1½ story. 1 person. Present at time of survey were 10 horses in a pasture with direct access to an unnamed tributary of the Harris River. Manure is composted or left on ground.
62. Owner: [REDACTED]
[REDACTED]
Private horse pasture with barn. No contact. Present at time of survey were approximately 8 horses. Manure disposal is unknown.
63. [REDACTED]
[REDACTED]
Dwelling- brick 2 story with brown trim. No contact. Present at time of survey were 6 horses in a fenced pasture. Manure disposal is unknown.
75. [REDACTED]. Dwelling- white aluminum siding 2 story with green roof. No contact. Present at time of survey were 5 horses in a fenced pasture 200' from Wallace Creek. Manure disposal is unknown.

SUMMARY

Area #54
Back River
February 29, 2000

SECTION B: SEWAGE POLLUTION SOURCES

1. SEWAGE TREATMENT WORKS

2 - DIRECT - #31, 71

0 - INDIRECT - None

2 - B.1. TOTAL

2. ON-SITE SEWAGE DEFICIENCIES

Correction of the deficiencies in this section is the responsibility of the local health department.

0 - CONTRIBUTES POLLUTION, DIRECT - None

20 - CONTRIBUTES POLLUTION, INDIRECT - #10, 11, 12, 15, 16, 17, 19, 20, 23, 26, 32, 37, 49, 50, 51, 65, 67, 72, 73, 74

0 - CP (Kitchen or Laundry Wastes), DIRECT - None

17 - CP (Kitchen or Laundry Wastes), INDIRECT - #14, 16, 22, 24, 32, 34, 39, 42, 43, 44, 45, 46, 47, 48, 56, 57, 77

3 - NO FACILITIES, DIRECT - #2, 3, 8

0 - NO FACILITIES, INDIRECT - None

40 - B.2. TOTAL

3. POTENTIAL POLLUTION

Periodic surveillance of these properties will be maintained to determine any status change.

5 - POTENTIAL POLLUTION - #12, 13, 18, 29, 40

SECTION C: NON-SEWAGE WASTE SITES

1. INDUSTRIAL WASTE SITES

9 - DIRECT - #1, 5, 6, 7, 9, 21, 25, 27, 49A

3 - INDIRECT - #30, 35, 76

12 - C.1. TOTAL

2. SOLID WASTE DUMPSITES

0 - DIRECT - None

2 - INDIRECT - #30, 50

2 - C.2. TOTAL

SECTION D: BOATING ACTIVITY

7 - MARINAS - #3, 28, 60, 64, 66, 69, 76

7 - OTHER PLACES WHERE BOATS ARE MOORED - #1, 2, 4, 7, 8, 9, 70

2 - UNDER SURVEILLANCE - #6, 68

16 - D. TOTAL

SECTION E: CONTRIBUTES ANIMAL POLLUTION

4 - DIRECT - #52, 55, 59, 61

11 - INDIRECT - #26, 33, 36, 38, 41, 53, 54, 58, 62, 63, 75

15 - E. TOTAL



2004 2034



COMMONWEALTH of VIRGINIA

Department of Health
Division of Shellfish Sanitation
1500 East Main Street, Suite 109
Richmond, Virginia 23219

(804) 786-7937
Fax: (804) 786-5567

NOTICE AND DESCRIPTION OF SHELLFISH AREA CONDEMNATION NUMBER 21, BACK RIVER

EFFECTIVE 25 JUNE 2002

Pursuant to Title 28.2, Chapter 8, §§28.2-803 through 28.2-808, §32.1-20, and §9-6.14:4.1, B.16 of the *Code of Virginia*:

1. The "Notice and Description of Shellfish Area Condemnation Number 21, Back River," effective 8 June 2001, is cancelled effective 25 June 2002.
2. Condemned Shellfish Area Number 21, Back River, is established, effective 25 June 2002, and shall consist of areas A, B, C, D, E, F, G, H, I and J described below. As to areas A, B, C, D, E, F, G, H and I, it shall be unlawful for any person, firm, or corporation to take shellfish from these areas for any purpose, except by permit granted by the Marine Resources Commission, as provided in Section 28.2-810 of the *Code of Virginia*. As to area J, it shall be unlawful for any person, firm, or corporation to take shellfish from this area, for any purpose. The boundaries of the area are shown on map titled "Back River, Condemned Shellfish Area Number 21, 25 June 2002" which is part of this notice.
3. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this order.

BOUNDARIES OF CONDEMNED AREA NUMBER 21

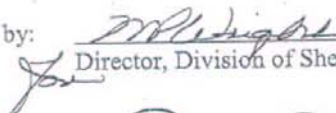
- A. The condemned area shall include all of that portion of Topping Creek and its tributaries lying upstream of a line drawn from Marine Resources Commission survey marker "Topping" in a northwesterly direction to the southernmost tip of the prominent point of land on the opposite shore.
- B. The condemned area shall include all of Cedar Creek and its tributaries lying upstream of a line drawn from Marine Resources Commission survey marker "Oak" through corner 388 of plat #10582 to the opposite shore.

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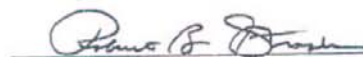
Shellfish Area Condemnation
 Number 21
 Page Two

- C. The condemned area shall include all of the Northwest Branch of Back River and its tributaries lying upstream of a line drawn between Marine Resources Commission survey markers "School NW BR" and "Oak."
- D. The condemned area shall include all of Tabbs Creek and its tributaries lying upstream of a line drawn from Marine Resources Commission survey marker "Tabb" due west to the opposite shore.
- E. The condemned area shall include all of the Southwest Branch of Back River and its tributaries lying upstream of a line drawn from Marine Resources Commission survey marker "See" due south to the opposite shore
- F. The condemned area shall include all of the unnamed tributary of Back River lying upstream of a line drawn from a point located 1780 feet from Marine Resources Commission survey marker "Camp" through the southernmost boundary of plat #13874 to the opposite shore.
- G. The condemned area shall include all of Harris Creek and its tributaries lying upstream of a line drawn due east-west through Marine Resources Commission survey marker "Spencer."
- H. The condemned area shall include all of an unnamed inlet off of the south shore of Back River within 300 feet in all directions from the midpoint of a line across the mouth of the inlet.
- I. The condemned area shall include all of that portion of Wallace Creek and its tributaries lying upstream of a line drawn from the northeasternmost tip of the prominent point of land on the western shore of the mouth of Wallace Creek north to the westernmost point of land of the small island north of Wallace Creek; thence along the offshore side of the island to its northeasternmost end; thence to the tip of the westernmost point of land on the downstream shore of the creek and downstream of Part J.
- J. The condemned area shall include all of that portion of Wallace Creek and its tributaries lying upstream of a line drawn due east to the opposite shore from a point on the shoreline located 1115 feet southeasterly of Marine Resources Commission survey marker "Gab."

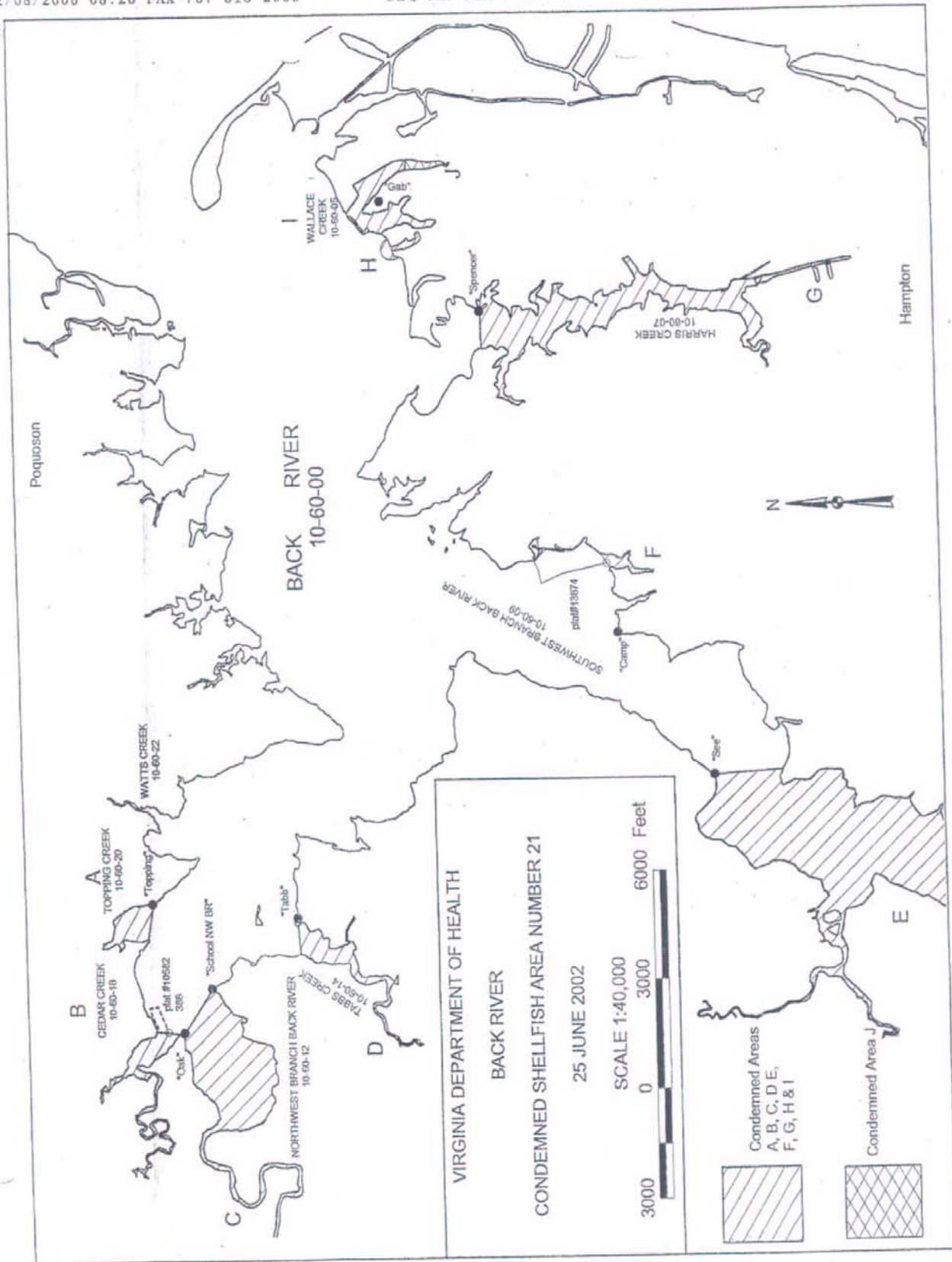
Recommended by:


 Director, Division of Shellfish Sanitation

Ordered by:


 State Health Commissioner

6/14/2002
 Date





COMMONWEALTH of VIRGINIA

Department of Health

P O BOX 2448
RICHMOND, VA 23218

RANDOLPH L. GORDON, M.D., M.P.H.
COMMISSIONER

TDD 1-800-828-1120

NOTICE AND DESCRIPTION OF SHELLFISH AREA CONDEMNATION NUMBER 158, BACK RIVER: LONG AND GRUNLAND CREEKS

EFFECTIVE 8 JULY 1997

Pursuant to Title 28.2, Chapter 8, §§28.2-803 through 28.2-808, §32.1-20, and §9-6.14:4.1, B.16 of the *Code of Virginia*:

1. The "Notice and Description of Shellfish Area Condemnation Number 158, Back River: Long and Grunland Creeks," effective 7 September 1990, is cancelled effective 8 July 1997.
2. Condemned Shellfish Area Number 158, Back River: Long and Grunland Creeks, is established, effective 8 July 1997. It shall be unlawful for any person, firm, or corporation to take shellfish from area #158 for any purpose, except by permit granted by the Marine Resources Commission, as provided in Section 28.2-810 of the *Code of Virginia*. The boundaries of the area are shown on map titled "Back River: Long and Grunland Creeks, Condemned Shellfish Area Number 158, 8 July 1997," which is a part of this notice.
3. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this order.

BOUNDARIES OF CONDEMNED AREA NUMBER 21

- A. The condemned area shall include all of that portion of Long Creek and its tributaries south of a line drawn due east from the northernmost tip of the first unnamed island upstream of Marine Resources Commission survey marker "Rip" and east of a line drawn from the southeasternmost tip of the same island due south to the opposite shore.
- B. The condemned area shall include all of that portion of salt ponds (headwaters of Long Creek) and its tributaries upstream of a line drawn across the mouth at its confluence with the Chesapeake Bay.

Shellfish Area Condemnation
Number 158
Page Two

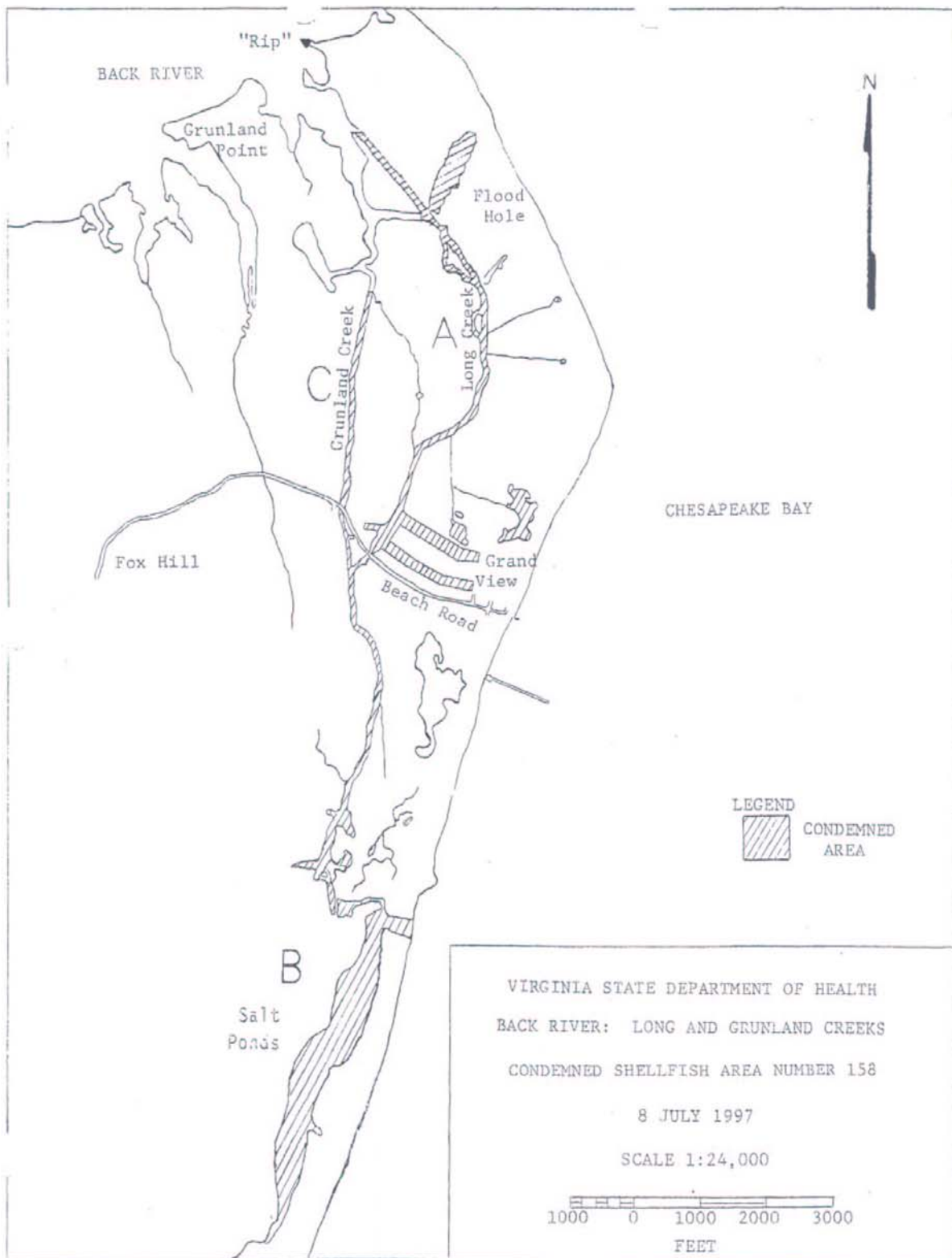
- C. The condemned area shall include all of that portion of Grunland Creek and its tributaries lying upstream of a line drawn across Grunland Creek in an east-west direction at a location 3700 feet north of Beach Road where it crosses Grunland Creek.

Recommended by:

R.H.C. Croonenberghs
Director, Division of Shellfish Sanitation

Ordered by:

Ready Condemned by Dan J. Hannon MD 6-24-97
State Health Commissioner *Deputy* Date





2002 8032
2004 3032

COMMONWEALTH of VIRGINIA

RANDOLPH L. GORDON, M.D., M.P.H.
COMMISSIONER

Department of Health
Office of Water Programs
Division of Shellfish Sanitation
1500 East Main Street, Suite 109
Richmond, Virginia 23219-3635

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NOTICE AND DESCRIPTION OF SHELLFISH AREA CONDEMNATION NUMBER 193, BACK RIVER: FRONT COVE

EFFECTIVE 24 JUNE 1998

Pursuant to Title 28.2, Chapter 8, §§28.2-803 through 28.2-808, §32.1-20, and §9-6.14:4.1, B.16 of the *Code of Virginia*:

1. Condemned Shellfish Area Number 193, Back River: Front Cove, is established, effective 24 June 1998, and shall consist of area A described below. As to area A, it shall be unlawful for any person, firm, or corporation to take shellfish from this area, for any purpose, except by permit granted by the Marine Resources Commission, as provided in Section 28.2-810 of the *Code of Virginia*. The boundaries of the area are shown on map titled "Back River: Front Cove, Condemned Shellfish Area Number 193, 24 June 1998" which is part of this notice.
2. The Department of Health will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this order.

BOUNDARIES OF CONDEMNED AREA NUMBER 193

The condemned area shall include all of Front Cove and its tributaries lying upstream of a line drawn from Messick Point northeasterly to Marine Resources Commission survey marker "Who."

Recommended by:

Director, Division of Shellfish Sanitation

Ordered by:

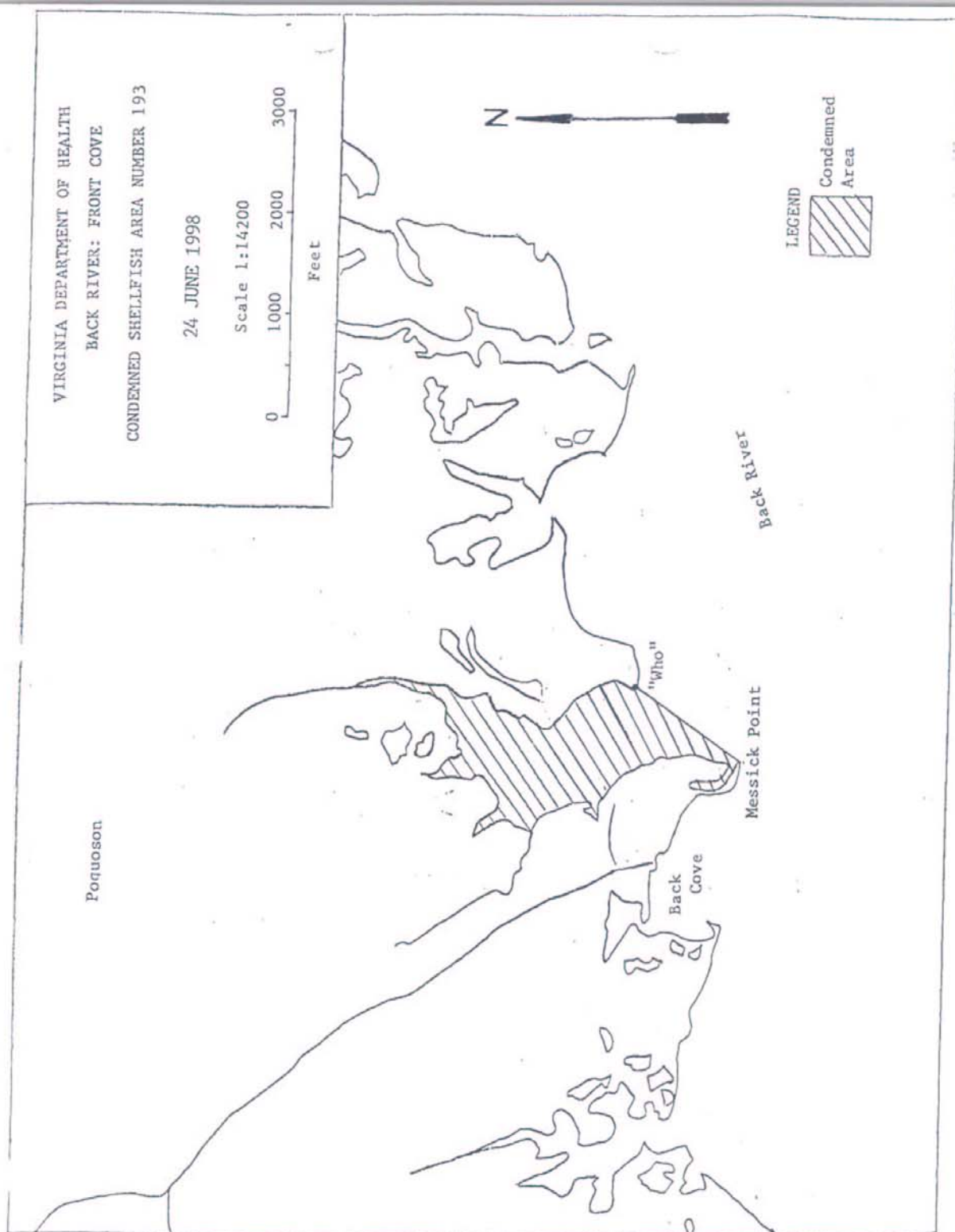
State Health Commissioner

6/11/98

Date

SIGNED PURSUANT TO
AUTHORITY VESTED IN
DEPUTY HEALTH COMMISSIONER
BY §2.1-20-01.2; CODE OF VA

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DEPARTMENT
OF HEALTH
Protecting You and Your Environment



Appendix B: Supporting Documentation and Watershed Assessment

- 1. Fecal Production Literature Review**
- 2. Steady State Tidal Prism Model**
- 3. Geographic Information System Data: Sources and Process**
- 4. Watershed Source Assessment**

B-1. Fecal Production Literature Review

	Concentration in feces		Fecal coliform production rate		Comments
	FC/g	Ref.	FC/day (seasonal)	Ref.	
Cat	7.9E+06	1	5.0E+09	4	
Dog	2.3E+07	1	5.0E+09	4	
Chicken	1.3E+06	1	1.9E+08	4	
Chicken			2.4E+08	9	
Cow	2.3E+05	1	1.1E+11	4	average of dairy and beef
Beef cattle			5.4E+09	9	
Deer	1.0E+02	6	2.5E+04	6	assume 250 g/day
Deer	?		5.0E+08	9	best prof. judgement
Duck			4.5E+09	4	average of 3 sources
Duck	3.3E+07	1	1.1E+10	9	
Canada Geese			4.9E+10	4	
Canada Geese	3.6E+04	3	9.0E+06	3	
Canada Geese	1.5E+04	8	3.8E+06	8	assume 250 g/day (3)
Horse			4.2E+08	4	
Pig	3.3E+06	1	5.5E+09	4	
Pig			8.9E+09	9	
Sea Gull	3.7E+08	8	3.7E+09	8	assume 10 g/day
Sea gull			1.9E+09	5	mean of four species
Rabbit	2.0E+01	2	?		
Raccoon	1.0E+09	6	1.0E+11	6	assume 100 g/day
Sheep	1.6E+07	1	1.5E+10	4	
Sheep			1.8E+10	9	
Turkey	2.9E+05	1	1.1E+08	4	
Turkey			1.3E+08	9	
Rodent	1.6E+05	1	?		
Muskrat	3.4E+05	6	3.4E+07	6	
Human	1.3E+07	1	2.0E+09	4	
Septage	4.0E+05	7	1.0E+09	7	assume 70/gal/day/person

1. Geldreich, E. and E. A. Kenner. 1969. Concepts of fecal streptococci in stream pollution. J. Wat. Pollut. Control Fed. 41:R336-R352.
2. Geldreich, E., E. C. Best, B. A. Kenner, and D. J. Van Donsel. 1968. The bacteriological aspects of stormwater pollution. J. Wat. Pollut. Control Fed. 40:1861-1872.
3. Hussong, D., J. M. Damare, R. J. Limpert, W. J. L. Sladen, R. M. Weiner, and R. R. Colwell. 1979. Microbial impact of Canada geese (*Branta canadensis*) and whistling swans.
4. U.S. Environmental Protection Agency. 2001. Protocol for Developing Pathogen TMDLs. EPA 841-R-00-002. Office of Water (4503F), United States Environmental Protection Agency, Washington, DC. 132 pp.
5. Gould, D. J. and M. R. Fletcher. 1978. Gull droppings and their effects on water quality. Wat. Res. 12:665-672.
6. Kator, H. and M. W. Rhodes. 1996. Identification of pollutant sources contributing to degraded sanitary water quality in Taskinas Creek National Estuarine Research Reserve, Virginia. Special Report in Applied Marine Science and Ocean Engineering No. 336, The College of William and Mary, VIMS/School of Marine Science.
7. Kator, H., and M. W. Rhodes. 1991. Evaluation of *Bacteroides fragilis* bacteriophage, a candidate human-specific indicator of fecal contamination for shellfish-growing waters. A final report prepared under NOAA Cooperative Agreement NA90AA-H-FD234. Prepared and submitted to NOAA, Southeast Fisheries Science Center, Charleston Laboratory, Charleston, SC. 98 pp.
8. Alderisio, K. A. and N. DeLuca. 1999. Seasonal enumeration of fecal coliform bacteria from the feces of ring-billed gulls (*Larus delawarensis*) and Canada geese (*Branta canadensis*). Appl. Environ. Microbiol. 65:5628-5630.
9. TMDL report attributed to Metcalf and Eddy 1991 (Potomac Headwaters of West VA).

Table B-2 GIS Data Elements and Sources

Data Element	Source	Date
Watershed boundary	Division of Shellfish Sanitation, VA Department of Health	Various dates
Subwatershed boundary	Center for Coastal Resources Management	2003
Land use	National Land Cover Data set (NLCD), US Geological Survey	1999
Elevation	Digital Elevation Models and Digital Raster Graphs, US Geological Survey	Various dates
Soils	SSURGO and STATSGO, National Resource Conservation Service	Various dates
Stream network	National Hydrography Dataset	1999
Precipitation, temperature, solar radiation, and evapotranspiration	Chesapeake Bay Program, Phase V	2002
Stream flow data	Gauging stations, US Geological Survey	Various dates
Shoreline Sanitary Survey deficiencies	Division of Shellfish Sanitation, VA Department of Health	Various dates
Wastewater treatment plants	VA Department of Environmental Quality	Various dates
Sewers	Division of Shellfish Sanitation, VA Department of Health	Various dates
Dog population	US Census Bureau American Veterinary Association	2000 2002
Domestic livestock	National Agricultural Statistics Service, USDA	1997/2001
Wildlife	Virginia Department of Game and Inland Fisheries, US Fish and Wildlife Service	2004 2004
Septic tanks (from human population)	Division of Shellfish Sanitation, VA Department of Health US Census Bureau	Various dates 2000
Water quality monitoring stations	Division of Shellfish Sanitation, VA Department of Health	Various dates
Water quality segments	Center for Coastal Resources Management	2003
Tidal prism segments	Department of Physical Sciences, VIMS	2003
Water body volumes	Bathymetry from Hydrographic Surveys, National Ocean Service, NOAA	Various dates
Condemnation zones	Division of Shellfish Sanitation, VA Department of Health	Various dates
Tidal data	NOAA tide tables	2004

A. GIS Data Description and Process

Watershed boundary determined by VDH, DSS. There are 105 watersheds in Virginia.

Subwatershed boundaries were delineated based on elevation, using digital 7.5 minute USGS topographic maps. There are 1836 subwatersheds.

The original land use has 15 categories that were combined into 3 categories:
urban (high and low density residential and commercial);
undeveloped (forest and wetlands); and
agriculture (pasture and crops).

Descriptions of Shoreline Sanitary Survey deficiencies are found in each report. Contact DSS for more information. Digital data layer generated by CCRM from hardcopy reports.

Wastewater treatment plant locations were obtained from DEQ and digital data layer was generated by CCRM. Design flow, measured flow, and fecal coliform discharges were obtained from DEQ.

Sewers data layer was digitized from Shoreline Sanitary Surveys by CCRM.

Dog numbers were obtained using the American Vet Associations equation of #households * 0.58.
See website for additional information—

<http://www.avma.org/membshp/marketstats/formulas.asp#households1>.

Database was generated by CCRM.

Domestic livestock includes cows, pigs, sheep, chickens, turkeys, and horses. Database was generated by CCRM.

Wildlife includes ducks and geese, deer, and raccoons. Animals were chosen based on availability of fecal coliform production rates and population estimates. Database was generated by CCRM.

Ducks and geese—US FWS, DGIF

Deer—DGIF

Raccoons—DGIF

Human input was based on DSS sanitary survey deficiencies and US Census Bureau population data (number of households).

Water quality monitoring data are collected, on average, once per month. Digital data layer of locations was generated by DSS. Water quality data was mathematically processed and input into a database for model use.

Water bodies were divided into segments based on the location of the monitoring stations (midway between stations). If a segment contained >1 station, the FC values were averaged. If a segment contained 0 stations, the value from the closest station(s) was assigned to it. Digital data layer of segments was generated by CCRM. FC loadings in the water were obtained by multiplying FC concentrations by segment volume.

Bathymetry data were used to generate a depth grid that was used to estimate volumes for each water quality segment and tidal prism segment.

The 1998 303d report was used to set the list of condemnation zones that require TMDLs. The digital data layer was generated by CCRM from hardcopy closure reports supplied by DSS.

B. Population Numbers

The process used to generate population numbers used for the nonpoint source contribution analysis part of the watershed model for the four source categories: human, livestock, pets and wildlife is described for each below.

Human:

The number of people contributing fecal coliform from failing septic tanks were developed in two ways and then compared to determine a final value.

- 1) Deficiencies (septic failures) from the DSS shoreline surveys were counted for each watershed and multiplied by 3 (average number of people per household).
- 2) Numbers of households in each watershed were determined from US Census Bureau data. The numbers of households were multiplied by 3 (average number of people per household) to get the total number of people and then multiplied by a septic failure rate* to get number of people contributing fecal coliform from failing septic tanks.

*The septic failure rate was estimated by dividing the number of deficiencies in the watershed by the total households in the watershed. The average septic failure rate was 12% and this was used as the default unless the DSS data indicated that septic failure was higher.

Livestock:

US Census Bureau data was used to calculate the livestock values. The numbers for each type of livestock (cattle, pigs, sheep, chickens (big and small), and horses) were reported by county. Each type of livestock was assigned to the land use(s) it lives on, or contributes to by the application of manure, as follows:

Cattle	cropland and pastureland
Pigs	cropland
Sheep	pastureland
Chickens	cropland
Horses	pastureland

GIS was used to overlay data layers for several steps:

- 1) The county boundaries and the land uses to get the area of each land use in each county. The number of animals was divided by the area of each land use for the county to get an animal density for each county.
- 2) The subwatershed boundaries and the land uses to get the area of each land use in each subwatershed.
- 3) The county boundaries and the subwatershed boundaries to get the area of each county in each subwatershed. If a subwatershed straddled more than one county, the areal proportion of each county in the subwatershed was used to determine the number of animals in the subwatershed.

Using MS Access, for each type of livestock, the animal density by county was multiplied by the area of each land use by county in each subwatershed to get the number of animals in each subwatershed. If more than one county was present in a subwatershed, the previous step was done for each county in the subwatershed, then summed for a total number of animals in the subwatershed. The number of animals in each subwatershed was summed to get the total number of animals in each watershed.

Pets:

The dog population was calculated using a formula for estimating the number of pets using national percentages, reported by the American Veterinary Association:

$\# \text{ dogs} = \# \text{ of households} * 0.58.$

US Census Bureau data provided the number of households by county. The number of dogs per county was divided by the area of the county to get a dog density per county. GIS was used to overlay the subwatershed boundaries with the county boundaries to get the area of each county in a subwatershed. If a subwatershed straddled more than one county, the areal proportion of each county in the subwatershed was calculated. Using MS Access, the area of each county in the subwatershed was multiplied by the dog density per county to get the number of dogs per subwatershed. If more than one county was present in a subwatershed, the previous step was done for each county in the subwatershed, then summed for a total number of dogs in the subwatershed. The number of dogs in each subwatershed was summed to get the total number of dogs in each watershed.

Wildlife:

Deer—

The number of deer were calculated using information supplied by DGIF, consisting of an average deer index by county and the formula:

$\# \text{ deer}/\text{mi}^2 \text{ of deer habitat} = (-0.64 + (7.74 * \text{average deer index})).$

Deer habitat consists of forests, wetlands, and agricultural lands (crop and pasture). GIS was used to overlay data layers for the following steps:

- 1) The county boundaries and the subwatershed boundaries to get the area of each county in each subwatershed. If a subwatershed straddled more than one county, the areal proportion of each county in the subwatershed was calculated.
- 2) The subwatershed boundaries and the deer habitat to get the area of deer habitat in each subwatershed.

Using MS Access, number of deer in each subwatershed were calculated by multiplying the $\# \text{ deer}/\text{mi}^2$ of deer habitat times the area of deer habitat. If more than one county was present in a subwatershed, the previous step was done for each county in the subwatershed, then summed for a total number of deer in the subwatershed. The number of deer in each subwatershed was summed to get the total number of deer in each watershed.

Ducks and Geese—

The data for ducks and geese were divided into summer (April through September) and winter (October through March).

Summer

The summer numbers were obtained from the Breeding Bird Population Survey (US Fish and Wildlife Service) and consisted of bird densities (ducks and geese) for 3 regions: the southside of the James River, the rest of the tidal areas, and the salt marshes in both areas. The number of ducks and geese in the salt marshes were distributed into the other 2 regions based on the areal proportion of salt marshes in them using the National Wetland Inventory data and GIS.

Winter

The winter numbers were obtained from the Mid-Winter Waterfowl Survey (US Fish and Wildlife Service) and consisted of population numbers for ducks and geese in several different areas in the tidal region of Virginia. MS Access was used to calculate the total number of ducks and geese in each area and then these numbers were grouped to match the 2 final regions (Southside and the rest of tidal Virginia) for the summer waterfowl populations. Winter populations were an order of magnitude larger than summer populations.

Data from DGIF showed the spatial distribution of ducks and geese for 1993 and 1994. Using this information and GIS a 250m buffer on each side of the shoreline was generated and contained 80% of the birds. Wider buffers did not incorporate significantly more birds, since they were located too far inland. GIS was used to overlay the buffer and the watershed boundaries to calculate the area of buffer in each watershed. To distribute this information into each subwatershed, GIS was used to calculate the length of shoreline in each subwatershed and the total length of shoreline in the watershed. Dividing the length of shoreline in each subwatershed by the total length of shoreline gives a ratio that was multiplied by the area of the watershed to get an estimate of the area of buffer in each subwatershed. MS Excel was used to multiply the area of buffer in each subwatershed times the total numbers of ducks and geese to get the numbers of ducks and geese in each subwatershed. These numbers were summed to get the total number of ducks and geese in each watershed. To get annual populations, the totals then were divided by 2, since they represent only 6 months of habitation (this reduction underestimates the total annual input from ducks and geese, but is the easiest conservative method to use since the model does not have a way to incorporate the seasonal differences).

Raccoons—

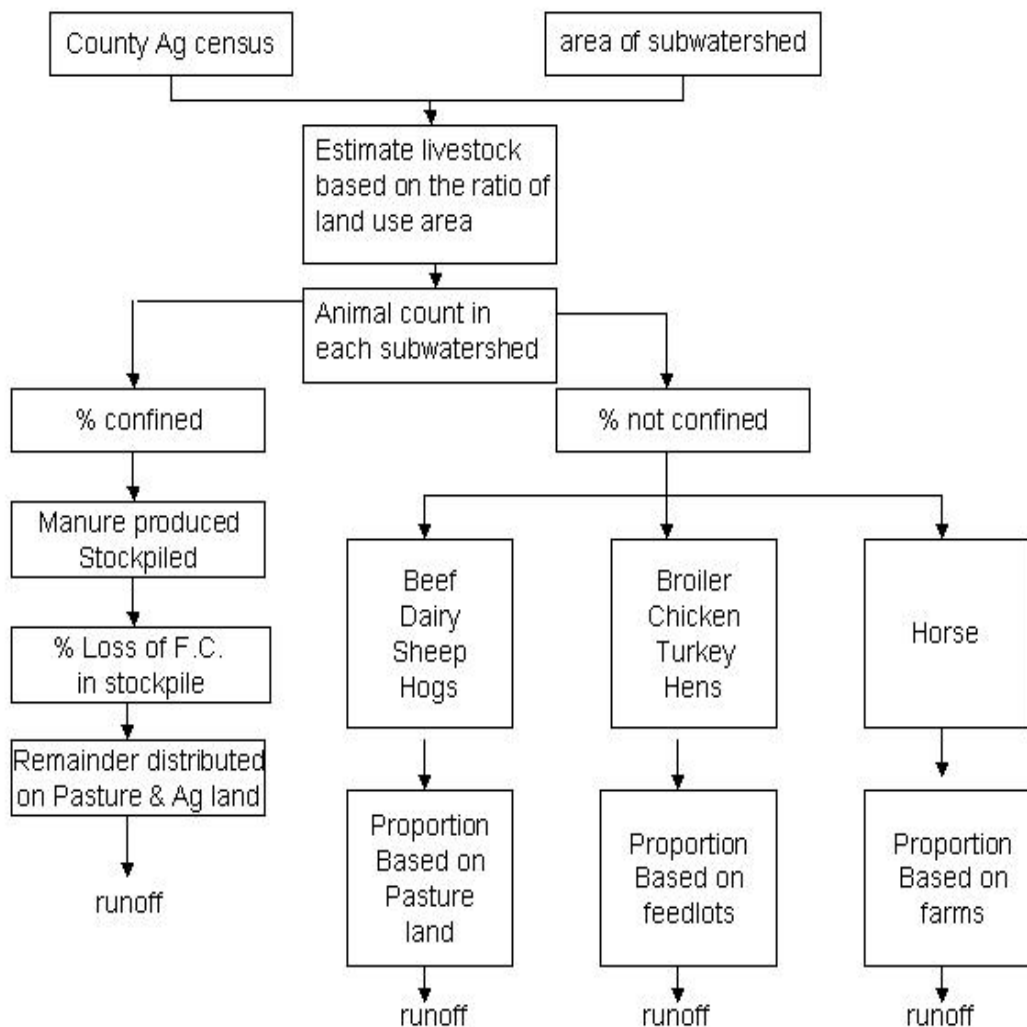
Estimates for raccoon densities were supplied by DGIF for 3 habitats—wetlands (including freshwater and saltwater, forested and herbaceous), along streams, and upland forests. GIS was used to generate a 600ft buffer around the wetlands and streams, and then to overlay this buffer layer with the subwatershed boundaries to get the area of the buffer in each subwatershed. GIS was used to overlay the forest layer with the subwatershed boundaries to get the area of forest in each subwatershed. MS Access was used to multiply the raccoon densities for each habitat times the area of each habitat in each subwatershed to get the number of raccoons in each habitat in each subwatershed. The number of raccoons in each subwatershed was summed to get the total number of raccoons in each watershed.

B-4. Watershed Source Assessment

The watershed assessment calculates fecal coliform loads by source based on geographic information system data. A geographic information system is a powerful computer software package that can store large amounts of spatially referenced data and associated tabular information. The data layers produced by a GIS can be used for many different tasks, such as generating maps, analyzing results, and modeling processes. The watershed model requires a quantitative assessment of human sewage sources (i. e., malfunctioning septic systems) and animal (livestock, pets and wildlife) fecal sources distributed within each watershed.

The fecal coliform contribution from livestock is through the manure spreading processes and direct deposition during grazing. This contribution was initially estimated based on land use data and the livestock census data. In the model, manure was applied to both cropland and pasture land depending on the grazing period. Figure B-1 shows a diagram of the procedure for estimating the total number of livestock in the watershed and fecal coliform production. A description of the process used to determine the source population values for wildlife, pets and human used in the calculation of percent loading is found in Appendix B.

FIGURE B-1 Diagram to Illustrate Procedure Used to Estimate Fecal Coliform Production from Estimated Livestock Population



**Table B-3 Nonpoint Source Load Distribution by Condemned Area Using
Watershed Model: Growing Area 54**

Condemned Area	Livestock	Wildlife	Human	Pet
21A	2.14%	45.01%	2.98%	49.87%
21B	2.14%	45.01%	2.98%	49.87%
21C	2.43%	9.09%	4.99%	83.49%
21D	0.00%	9.46%	5.11%	85.43%
21E	0.00%	8.29%	5.18%	86.54%
21F	0.00%	20.03%	4.51%	75.46%
21H	0.00%	17.80%	4.64%	77.56%
158A	0.00%	23.54%	4.31%	72.14%
193A	0.00%	56.39%	2.46%	41.15%

Appendix C: Water Quality Data Summary

Table 4-3. Observed Geometric Mean and 90th Percentile By Condemned Area

Condemned Area	Mean of Geometric Means	SD Geometric Means	Mean of the 90 th Means	SD 90 th Means	Last 30 Sample Geo mean	Last 30 Sample 90th
21A	11.4	2.3	62.9	19.2	8.5	38.6
21B	16.4	4.6	134.0	61.4	10.4	62.6
21C	22.1	6.8	137.7	43.1	15.7	114.9
21D	20.1	7.5	184.0	91.3	12.0	102.1
21E	15.1	5.4	109.5	59.1	7.7	38.6
21F	14.4	4.5	107.9	50.4	10.9	62.3
21G	11.3	3.3	86.7	41.9	6.6	45.1
21H	10.4	2.5	66.6	29.9	6.9	31.0
21I	10.9	2.9	67.2	31.8	6.0	24.6
158A	20.1	6.3	123.1	58.4	20.2	111.1
193A	9.0	2.4	50.9	20.0	7.9	43.8

Appendix D

1) Code of Virginia §62.1-194.1 Obstructing or contaminating state waters.

**2) Code of Federal Regulations. Title 33, Volume 2, Parts 120 to 1999
Revised as of July 1, 2000**

D1: Code of Virginia §62.1-194.1

§62.1-194.1. Obstructing or contaminating state waters.

Except as otherwise permitted by law, it shall be unlawful for any person to dump, place or put, or cause to be dumped, placed or put into, upon the banks of or into the channels of any state waters any object or substance, noxious or otherwise, which may reasonably be expected to endanger, obstruct, impede, contaminate or substantially impair the lawful use or enjoyment of such waters and their environs by others. Any person who violates any provision of this law shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than \$100 nor more than \$500 or by confinement in jail not more than twelve months or both such fine and imprisonment. Each day that any of said materials or substances so dumped, placed or put, or caused to be dumped, placed or put into, upon the banks of or into the channels of, said streams shall constitute a separate offense and be punished as such. In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the county or corporation court of the city wherein any such violation occurs, whether there be a criminal conviction therefore or not shall, upon a bill in equity, filed by the attorney for the Commonwealth of such county or by any person whose property is damaged or whose property is threatened with damage from any such violation, award an injunction enjoining any violation of this law by any person found by the court in such suit to have violated this law or causing the same to be violated, when made a party defendant to such suit. (1968, c. 659.)

**D2: Code of Federal Regulations. Title 33, Volume 2, Parts 120 to 1999
Revised as of July 1, 2000 From the U.S. Government Printing Office via
GPO Access [CITE: 33CFR159]**

NAVIGABLE WATERS

CHAPTER I--COAST GUARD, DEPARTMENT OF TRANSPORTATION (CONTINUED)

PART 159--MARINE SANITATION DEVICES

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159.126a Suspended solids test: Type II devices.
159.127 Safety coliform count: Recirculating devices.
159.129 Safety: Ignition prevention test.
159.131 Safety: Incinerating device.

Subpart D--Recognition of Facilities

159.201 Recognition of facilities.

Authority: Sec. 312(b)(1), 86 Stat. 871 (33 U.S.C. 1322(b)(1)); 49 CFR 1.45(b) and 1.46(l) and (m).

Source: CGD 73-83, 40 FR 4624, Jan. 30, 1975, unless otherwise noted.

Subpart A--General

Sec. 159.1 Purpose.

This part prescribes regulations governing the design and construction of marine sanitation devices and procedures for certifying that marine sanitation devices meet the regulations and the standards of the Environmental Protection Agency promulgated under section 312 of the Federal Water Pollution

Control Act (33 U.S.C. 1322), to eliminate the discharge of untreated sewage from vessels into the waters of the United States, including the territorial seas. Subpart A of this part contains regulations governing the manufacture and operation of vessels equipped with marine sanitation devices.

Sec. 159.3 Definitions.

In this part:

Coast Guard means the Commandant or his authorized representative.

Discharge includes, but is not limited to, any spilling, leaking, pouring, pumping, emitting, emptying, or dumping.

Existing vessel includes any vessel, the construction of which was initiated before January 30, 1975.

Fecal coliform bacteria are those organisms associated with the intestine of warm-blooded animals that are commonly used to indicate the presence of fecal material and the potential presence of organisms capable of causing human disease.

Inspected vessel means any vessel that is required to be inspected under 46 CFR Ch. I.

Length means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments are not to be included in the measurement.

Manufacturer means any person engaged in manufacturing, assembling, or importing of marine sanitation devices or of vessels subject to the standards and regulations promulgated under section 312 of the Federal Water Pollution Control Act.

Marine sanitation device and device includes any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

New vessel includes any vessel, the construction of which is initiated on or after January 30, 1975.

Person means an individual, partnership, firm, corporation, or association, but does not include an individual on board a public vessel.

Public vessel means a vessel owned or bare-boat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

Recognized facility means any laboratory or facility listed by the Coast Guard as a recognized facility under this part.

Sewage means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body waste.

Territorial seas means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of 3 miles.

Type I marine sanitation device means a device that, under the test conditions described in Secs. 159.123 and 159.125, produces an effluent having a fecal coliform bacteria count not greater than 1,000 per 100 milliliters and no visible floating solids.

Type II marine sanitation device means a device that, under the test conditions described in Secs. 159.126 and 159.126a, produces an effluent having a fecal coliform bacteria count not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter.

Type III marine sanitation device means a device that is designed to prevent the overboard discharge of treated or untreated sewage or any waste derived from sewage.

Uninspected vessel means any vessel that is not required to be inspected under 46 CFR Chapter I.

United States includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands. **Vessel** includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the waters of the United States.

[CGD 96-026, 61 FR 33668, June 28, 1996, as amended by CGD 95-028, 62 FR 51194, Sept. 30, 1997]

Sec. 159.4 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register; and the material must be available to the public.

All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC, and at the U.S. Coast Guard Office of Design and Engineering Standards (G-MSE), 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part, and the sections affected, are as follows:

American Society for Testing and Materials (ASTM)
100 Barr Harbor Drive, West Conshohocken, PA 19428-2959.

ASTM E 11-95, Standard Specification for Wire Cloth and Sieves for Testing Purposes--
159.125

[USCG-1999-5151, 64 FR 67176, Dec. 1, 1999]

Sec. 159.5 Requirements for vessel manufacturers.

No manufacturer may manufacture for sale, sell, offer for sale, or distribute for sale or resale any vessel equipped with installed toilet facilities unless it is equipped with:

(a) An operable Type II or III device that has a label on it under Sec. 159.16 or that is certified under Sec. 159.12 or Sec. 159.12a; or

(b) An operable Type I device that has a label on it under Sec. 159.16 or that is certified under Sec. 159.12, if the vessel is 19.7 meters (65 feet) or less in length.

[CGD 95-028, 62 FR 51194, Sept. 30, 1997]

Sec. 159.7 Requirements for vessel operators.

(a) No person may operate any vessel equipped with installed toilet facilities unless it is equipped with:

(1) An operable Type II or III device that has a label on it under Sec. 159.16 or that is certified under Sec. 159.12 or Sec. 159.12a; or

(2) An operable Type I device that has a label on it under Sec. 159.16 or that is certified under Sec. 159.12, if the vessel is 19.7 meters (65 feet) or less in length.

(b) When operating a vessel on a body of water where the discharge of treated or untreated sewage is prohibited by the Environmental Protection Agency under 40 CFR 140.3 or 140.4, the operator must secure each Type I or Type II device in a manner which prevents discharge of treated or untreated sewage. Acceptable methods of securing the device include--

- (1) Closing the seacock and removing the handle;
- (2) Padlocking the seacock in the closed position;
- (3) Using a non-releasable wire-tie to hold the seacock in the closed position; or
- (4) Locking the door to the space enclosing the toilets with a padlock or door handle key lock.

(c) When operating a vessel on a body of water where the discharge of untreated sewage is prohibited by the Environmental Protection Agency under 40 CFR 140.3, the operator must secure each Type III device in a manner which prevents discharge of sewage. Acceptable methods of securing the device include--

- (1) Closing each valve leading to an overboard discharge and removing the handle;
- (2) Padlocking each valve leading to an overboard discharge in the closed position; or
- (3) Using a non-releasable wire-tie to hold each valve leading to an overboard discharge in the closed position.

[CGH 95-028, 62 FR 51194, Sept. 30, 1997]

Subpart B--Certification Procedures

Sec. 159.11 Purpose.

This subpart prescribes procedures for certification of marine sanitation devices and authorization for labels on certified devices.

Sec. 159.12 Regulations for certification of existing devices.

(a) The purpose of this section is to provide regulations for certification of existing devices until manufacturers can design and manufacture devices that comply with this part and recognized facilities are prepared to perform the testing required by this part.

(b) Any Type III device that was installed on an existing vessel before January 30, 1975, is considered certified.

(c) Any person may apply to the Commandant (G-MSE), U.S. Coast Guard, Washington, D.C. 20593-0001 for certification of a marine sanitation device manufactured before January 30, 1976. The Coast Guard will issue a letter certifying the device if the applicant shows that the device meets Sec. 159.53 by:

- (1) Evidence that the device meets State standards at least equal to the standards in Sec. 159.53, or
- (2) Test conducted under this part by a recognized laboratory, or
- (3) Evidence that the device is substantially equivalent to a device certified under this section, or
- (4) A Coast Guard field test if considered necessary by the Coast Guard.

(d) The Coast Guard will maintain and make available a list that identifies each device certified under this section.

(e) Devices certified under this section in compliance with Sec. 159.53 need not meet the other regulations in this part and may not be labeled under Sec. 159.16.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15325, Apr. 12, 1976; CGD 82-063a, 48 FR 4776, Feb. 3, 1983; CGD 88-052, 53 FR 25122, July 1, 1988; CGD 96-026, 61 FR 33668, June 28, 1996]

Sec. 159.12a Certification of certain Type III devices.

(a) The purpose of this section is to provide regulations for certification of certain Type III devices.

(b) Any Type III device is considered certified under this section if:

(1) It is used solely for the storage of sewage and flushwater at ambient air pressure and temperature; and

(2) It is in compliance with Sec. 159.53(c).

(c) Any device certified under this section need not comply with the other regulations in this part except as required in paragraphs (b)(2) and (d) of this section and may not be labeled under Sec. 159.16.

(d) Each device certified under this section which is installed aboard an inspected vessel must comply with Sec. 159.97.

[CGD 76-145, 42 FR 11, Jan. 3, 1977]

Sec. 159.14 Application for certification.

(a) Any manufacturer may apply to any recognized facility for certification of a marine sanitation device. The application for certification must indicate whether the device will be used aboard all vessels or only aboard uninspected vessels and to which standard in Sec. 159.53 the manufacturer requests the device to be tested.

(b) An application may be in any format but must be in writing and must be signed by an authorized representative of the manufacturer and include or be accompanied by:

(1) A complete description of the manufacturer's production quality control and inspection methods, record keeping systems pertaining to the manufacture of marine sanitation devices, and testing procedures;

(2) The design for the device, including drawings, specifications and other information that describes the materials, construction and operation of the device;

(3) The installation, operation, and maintenance instructions for the device; and

(4) The name and address of the applicant and the manufacturing facility.

(c) The manufacturer must furnish the recognized facility one device of each model for which certification is requested and samples of each material from which the device is constructed, that must be tested destructively under Sec. 159.117. The device furnished is for the testing required by this part except that, for devices that are not suited for unit testing, the manufacturer may submit the design so that the recognized facility may determine the components of the device and materials to be submitted for testing and the tests to be performed at a place other than the facility. The

Coast Guard must review and accept all such determinations before testing is begun.

(d) At the time of submittal of an application to a recognized facility the manufacturer must notify the Coast Guard of the type and model of the device, the name of the recognized facility to which application is being made, and the name and address of the manufacturer, and submit a signed statement of the times when the manufacturer will permit designated officers and employees of the Coast Guard to have access to the manufacturer's facilities and all records required by this part.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15325, Apr. 12, 1976]

Sec. 159.15 Certification.

(a) The recognized facility must evaluate the information that is submitted by the manufacturer in accordance with Sec. 159.14(b) (1), (2), and (3), evaluate the device for compliance with Secs. 159.53 through 159.95, test the device in accordance with Sec. 159.101 and submit to the Commandant (G-MSE), U.S. Coast Guard, Washington, D.C.

20593-0001 the following:

- (1) The information that is required under Sec. 159.14(b);
- (2) A report on compliance evaluation;
- (3) A description of each test;
- (4) Test results; and
- (5) A statement, that is signed by the person in charge of testing, that the test results are accurate and complete.

(b) The Coast Guard certifies a test device, on the design of the device, if it determines, after consideration of the information that is required under paragraph (a) of this section, that the device meets the requirements in Subpart C of this part.

(c) The Coast Guard notifies the manufacturer and recognized facility of its determination under paragraph (b) of this section. If the device is certified, the Coast Guard includes a certification number for the device. If certification is denied, the Coast Guard notifies the manufacturer and recognized facility of the requirements of this part that are not met. The manufacturer may appeal a denial to the Commandant (G-MSE), U.S. Coast Guard, Washington, D.C. 20593-0001.

(d) If upon re-examination of the test device, the Coast Guard determines that the device does not in fact comply with the requirements of Subpart C of this part, it may terminate the certification.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15326, Apr. 12, 1976; CGD 82-063a, 48 FR 4776, Feb. 3, 1983; CGD 88-052, 53 FR 25122, July 1, 1988; CGD 96-026, 61 FR 33668, June 28, 1996]

Sec. 159.16 Authorization to label devices.

(a) When a test device is certified under Sec. 159.15(b), the Coast Guard will issue a letter that authorizes the manufacturer to label each device that he manufactures with the manufacturer's certification that the device is in all material respects substantially the same as a test device certified by the U.S. Coast Guard pursuant to section 312 of the Federal Water Pollution Control Act Amendments of 1972.

(b) Certification placed on a device by its manufacturer under this section is the certification required by section 312(h)(4) of the Federal Water Pollution Control Act Amendments of 1972, which makes it unlawful for a vessel that is subject to the standards and regulations promulgated under the Act to operate on the navigable waters of the United States, if such vessel is not equipped with an operable marine sanitation device certified pursuant to section 312 of the Act.

(c) Letters of authorization issued under this section are valid for 5 years, unless sooner suspended, withdrawn, or terminated and may be reissued upon written request of the manufacturer to whom the letter was issued.

(d) The Coast Guard, in accordance with the procedure in 46 CFR 2.75, may suspend, withdraw, or terminate any letter of authorization issued under this section if the Coast Guard finds that the manufacturer is engaged in the manufacture of devices labeled under this part that are not in all material respects substantially the same as a test device certified pursuant to this part.

Sec. 159.17 Changes to certified devices.

(a) The manufacturer of a device that is certified under this part shall notify the Commandant (G-MSE), U.S. Coast Guard, Washington, D.C. 20593-0001 in writing of any change in the design of the device.

(b) A manufacturer shall include with a notice under paragraph (a) of this section a description of the change, its advantages, and the recommendation of the recognized facility as to whether the device remains in all material respects substantially the same as the original test device.

(c) After notice under paragraph (a) of this section, the Coast Guard notifies the manufacturer and the recognized facility in writing of any tests that must be made for certification of the device or for any change in the letter of authorization. The manufacturer may appeal this determination to the Commandant (G-MSE), U.S. Coast Guard, Washington, D.C. 20593-0001.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 82-063a, 48 FR 4776, Feb. 3, 1983; CGD 88-052, 53 FR 25122, July 1, 1988; CGD 96-026, 61 FR 33668, June 28, 1996]

Sec. 159.19 Testing equivalency.

(a) If a test required by this part may not be practicable or necessary, a manufacturer may apply to the Commandant (G-MSE), U.S. Coast Guard, Washington, DC 20593-0001 for deletion or approval of an alternative test as equivalent to the test requirements in this part. The application must include the manufacturer's justification for deletion or the alternative test and any alternative test data.

(b) The Coast Guard notifies the manufacturer of its determination under paragraph (a) of this section and that determination is final.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 82-063a, 48 FR 4776, Feb. 3, 1983; CGD 88-052, 53 FR 25122, July 1, 1988; CGD 96-026, 61 FR 33668, June 28, 1996]

Subpart C--Design, Construction, and Testing

Sec. 159.51 Purpose and scope.

(a) This subpart prescribes regulations governing the design and construction of marine sanitation devices.

(b) Unless otherwise authorized by the Coast Guard each device for which certification under this part is requested must meet the requirements of this subpart.

Sec. 159.53 General requirements.

A device must:

(a) Under the test conditions described in Secs. 159.123 and 159.125, produce an effluent having a fecal coliform bacteria count not greater than 1,000 per 100 milliliters and no visible floating solids (Type I),

(b) Under the test conditions described in Secs. 159.126 and 159.126a, produce an effluent having a fecal coliform bacteria count not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter (Type II), or

(c) Be designed to prevent the overboard discharge of treated or untreated sewage or any waste derived from sewage (Type III).

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15325, Apr. 12, 1976]

Sec. 159.55 Identification.

(a) Each production device must be legibly marked in accordance with paragraph (b) of this section with the following information:

(1) The name of the manufacturer.

(2) The name and model number of the device.

(3) The month and year of completion of manufacture.

(4) Serial number.

(5) Whether the device is certified for use on an inspected or an uninspected vessel.

(6) Whether the device is Type I, II, or III.

(b) The information required by paragraph (a) of this section must appear on a nameplate attached to the device or in lettering on the device. The nameplate or lettering stamped on the device must be capable of withstanding without loss of legibility the combined effects of normal wear and tear and exposure to water, salt spray, direct sunlight, heat, cold, and any substance listed in Sec. 159.117(b) and (c). The nameplate and lettering must be designed to resist efforts to remove them from the device or efforts to alter the information stamped on the nameplate or the device without leaving some obvious evidence of the attempted removal or alteration.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15325, Apr. 12, 1976]

Sec. 159.57 Installation, operation, and maintenance instructions.

(a) The instructions supplied by the manufacturer must contain directions for each of the following:

(1) Installation of the device in a manner that will permit ready access to all parts of the device requiring routine service and that will provide any flue clearance necessary for fire safety.

(2) Safe operation and servicing of the device so that any discharge meets the applicable requirements of Sec. 159.53.

(3) Cleaning, winter layup, and ash or sludge removal.

(4) Installation of a vent or flue pipe.

(5) The type and quantity of chemicals that are required to operate the device, including instructions on the proper handling, storage and use of these chemicals.

(6) Recommended methods of making required plumbing and electrical connections including fuel connections and supply circuit overcurrent protection.

(b) The instructions supplied by the manufacturer must include the following information:

(1) The name of the manufacturer.

(2) The name and model number of the device.

(3) Whether the device is certified for use on an inspected, or uninspected vessel.

(4) A complete parts list.

(5) A schematic diagram showing the relative location of each part.

(6) A wiring diagram.

(7) A description of the service that may be performed by the user without coming into contact with sewage or chemicals.

(8) Average and peak capacity of the device for the flow rate, volume, or number of persons that the device is capable of serving and the period of time the device is rated to operate at peak capacity.

(9) The power requirements, including voltage and current.

(10) The type and quantity of fuel required.

(11) The duration of the operating cycle for unitized incinerating devices.

(12) The maximum angles of pitch and roll at which the device operates in accordance with the applicable requirements of Sec. 159.53.

(13) Whether the device is designed to operate in salt, fresh, or brackish water.

(14) The maximum hydrostatic pressure at which a pressurized sewage retention tank meets the requirements of Sec. 159.111.

(15) The maximum operating level of liquid retention components.

(16) Whether the device is Type I, II, or III.

(17) A statement as follows:

Note: The EPA standards state that in freshwater lakes, freshwater reservoirs or other freshwater impoundments whose inlets or outlets are such as to prevent the ingress or egress by vessel traffic subject to this regulation, or in rivers not capable of navigation by interstate vessel traffic subject to this regulation, marine sanitation devices certified by the U.S. Coast Guard installed on all vessels shall be designed and operated to prevent the overboard discharge of sewage, treated or untreated, or of any waste derived from sewage. The EPA standards further state that this shall not be construed to prohibit the carriage of Coast Guard-certified flow-through treatment devices which have been secured so as to prevent such discharges. They also state that waters where a Coast Guard-certified marine sanitation device permitting discharge is allowed include coastal waters and estuaries, the Great Lakes and interconnected waterways, freshwater lakes and impoundments accessible through locks, and other flowing waters that are navigable interstate by vessels subject to this regulation (40 CFR 140.3).

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15325, Apr. 12, 1976]

Sec. 159.59 Placard.

Each device must have a placard suitable for posting on which is printed the operating instructions, safety precautions, and warnings pertinent to the device. The size of the letters printed on the placard must be one-eighth of an inch or larger.

Sec. 159.61 Vents.

Vents must be designed and constructed to minimize clogging by either the contents of the tank or climatic conditions such as snow or ice.

Sec. 159.63 Access to parts.

Each part of the device that is required by the manufacturer's instructions to be serviced routinely must be readily accessible in the installed position of the device recommended by the manufacturer.

Sec. 159.65 Chemical level indicator.

The device must be equipped with one of the following:

- (a) A means of indicating the amount in the device of any chemical that is necessary for its effective operation.
- (b) A means of indicating when chemicals must be added for the proper continued operation of the device.

Sec. 159.67 Electrical component ratings.

Electrical components must have current and voltage ratings equal to or greater than the maximum load they may carry.

Sec. 159.69 Motor ratings.

Motors must be rated to operate at 50 deg.C ambient temperature.

Sec. 159.71 Electrical controls and conductors.

Electrical controls and conductors must be installed in accordance with good marine practice. Wire must be copper and must be stranded. Electrical controls and conductors must be protected from exposure to chemicals and sewage.

Sec. 159.73 Conductors.

Current carrying conductors must be electrically insulated from non-current carrying metal parts.

Sec. 159.75 Overcurrent protection.

Overcurrent protection must be provided within the unit to protect subcomponents of the device if the manufacturer's recommended supply circuit overcurrent protection is not adequate for these subcomponents.

Sec. 159.79 Terminals.

Terminals must be solderless lugs with ring type or captive spade ends, must have provisions for being locked against movement from vibration, and must be marked for identification on the wiring diagram required in Sec. 159.57. Terminal blocks must be nonabsorbent and securely mounted. Terminal blocks must be provided with barrier insulation that prevents contact between adjacent terminals or metal surfaces.

Sec. 159.81 Baffles.

Baffles in sewage retention tanks, if any, must have openings to allow liquid and vapor to flow freely across the top and bottom of the tank.

Sec. 159.83 Level indicator.

Each sewage retention device must have a means of indicating when the device is more than $\frac{3}{4}$ full by volume.

Sec. 159.85 Sewage removal.

The device must be designed for efficient removal of nearly all of the liquid and solids in the sewage retention tank.

Sec. 159.87 Removal fittings.

If sewage removal fittings or adapters are provided with the device, they must be of either 1½" or 4" nominal pipe size.

Sec. 159.89 Power interruption: Type I and II devices.

A discharge device must be designed so that a momentary loss of power during operation of the device does not allow a discharge that does not meet the requirements in Sec. 159.53.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15326, Apr. 12, 1976]

Sec. 159.93 Independent supporting.

The device must have provisions for supporting that are independent from connecting pipes.

Sec. 159.95 Safety.

(a) Each device must--

(1) Be free of design defects such as rough or sharp edges that may cause bodily injuries or that would allow toxic substances to escape to the interior of the vessel;

(2) Be vented or provided with a means to prevent an explosion or over pressurization as a result of an accumulation of gases; and

(3) Meet all other safety requirements of the regulations applicable to the type of vessel for which it is certified.

(b) A chemical that is specified or provided by the manufacturer for use in the operation of a device and is defined as a hazardous material in 46 CFR Part 146 must be certified by the procedures in 46 CFR Part 147.

(c) Current carrying components must be protected from accidental contact by personnel operating or routinely servicing the device. All current carrying components must as a minimum be of drip-proof construction or be enclosed within a drip-proof compartment.

Sec. 159.97 Safety: inspected vessels.

The Commandant approves the design and construction of devices to be certified for installation and operation on board inspected vessels on the basis of tests and reports of inspection under the applicable marine engineering requirements in Subchapter F of Title 46, Code of Federal Regulations, and under the applicable electrical engineering requirements in Subchapter J of Title 46 Code of Federal Regulations.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15326, Apr. 12, 1976]

Sec. 159.101 Testing: general.

Unless otherwise authorized by the Coast Guard, a recognized facility must perform each test described in Secs. 159.103 through 159.131. The same device must be used for each test and tested in the order in which the tests are described. There must be no cracking, softening, deterioration, displacement, breakage, leakage or damage of components or materials that affects the operation or safety of the device after each test described in Secs. 159.103 through 159.117 and Sec. 159.121, and the device must remain operable after the test described in Sec. 159.119. The device must be set up in a manner simulating installation on a vessel in accordance with the manufacturer's instructions with respect to mounting, water supply, and discharge fittings.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15326, Apr. 12, 1976]

Sec. 159.103 Vibration test.

The device, with liquid retention components, if any, filled with water to one-half of their volume, must be subjected to a sinusoidal vibration for a period of 12 hours, 4 hours in each of the x, y, and z planes, at the resonant frequency of the device (or at 55 cycles per second if there is no resonant frequency between 10 to 60 hertz) and with a peak amplitude of 0.019 to 0.021 inches.

Sec. 159.105 Shock test.

The device, with liquid retention components, if any, filled with water to half of their volume, must be subjected to 1,000 vertical shocks that are ten times the force of gravity (10g) and have a duration of 20-25 milliseconds measured at the base of the half-sine shock envelope.

Sec. 159.107 Rolling test.

(a) The device, with liquid retention components, if any, filled with water to half of their volume, must be subjected to 100 cycles with the axis of rotation 4 feet from the centerline of the device, no more than 6 inches below the plane of the bottom of the device, and parallel to any tank baffles. The device must then be rotated 90 degrees on its vertical axis and subjected to another 100 cycles. This testing must be repeated with the liquid retention components filled to the maximum operating level as specified by the manufacturer in Sec. 159.57.

(b) Eighty percent of the rolling action must be approximately 15 degrees on either side of the vertical and at a cyclic rate of 3 to 4 seconds. Twenty percent motions must be approximately 30 degrees, or the maximum angle specified by the manufacturer under Sec. 159.57, whichever is greater, on either side of the vertical at a cyclic rate of 6 to 8 seconds.

Sec. 159.109 Pressure test.

Any sewage retention tank that is designed to operate under pressure must be pressurized hydrostatically at a pressure head of 7 feet or to 150 percent of the maximum pressure specified by the manufacturer for operation of the tank, whichever is greater. The tank must hold the water at this pressure for 1 hour with no evidence of leaking.

Sec. 159.111 Pressure and vacuum pulse test.

Liquid retention components of the device with manufacturer specified venting installed must be subjected to 50 fillings of water at a pressure head of 7 feet or the maximum pressure specified by the manufacturer for operation of the device, whichever is greater, and then emptied with a 45 gallon per minute or larger positive displacement pump that remains in operation 30 seconds after emptying the tank at the end of each cycle.

Sec. 159.115 Temperature range test.

(a) The device must be held at a temperature of 60 deg.C or higher for a period of 16 hours.

(b) The device must be held at a temperature of -40 deg.C or less for a period of 16 hours following winterization in accordance with manufacturers' instructions.

Sec. 159.117 Chemical resistance test.

(a) In each case where the recognized facility doubts the ability of a material to withstand exposure to the substances listed in paragraphs (b) and (c) of this section a sample of the material must be tested.

(b) A sample referred to in paragraph (a) of this section must be partially submerged in each of the following substances for 100 hours at an ambient temperature of 22 deg.C.

(1) Sewage.

(2) Any disinfectant that is required in the operation of the device.

(3) Any chemical compound in solid, liquid or gaseous form, used, emitted or produced in the operation of the device.

(4) Fresh or salt (3.5 percent Sodium Chloride) flush water.

(5) Toilet bowl cleaners.

(6) Engine Oil (SAE/30).

(7) Ethylene Glycol.

(8) Detergents (household and bilge cleaning type).

(c) A sample of the material must be doused 20 times, with a 1 hour drying period between dousings, in each of the following substances:

(1) Gasoline.

(2) Diesel fuel.

(3) Mineral spirits.

(4) Turpentine.

(5) Methyl alcohol.

Sec. 159.119 Operability test; temperature range.

The device must operate in an ambient temperature of 5 deg.C with inlet operating fluid temperature varying from 2 deg.C to 32 deg.C and in an ambient temperature of 50 deg.C with inlet operating fluid temperature varying from 2 deg.C to 32 deg.C.

Sec. 159.121 Sewage processing test.

(a) The device must process human sewage in the manner for which it is designed when tested in accordance with this section. There must be no sewage or sewage-treating chemicals remaining on surfaces or in crevices that could come in contact with a person using the device or servicing the device in accordance with the instructions supplied under

Sec. 159.57(b)(7).

(b) During the test the device must be operated and maintained in accordance with the manufacturer's instructions. Any initial start-up time specified by the manufacturer must be allowed before test periods begin. For 1 hour of each 8-hour test period, the device must be tilted to the maximum angles specified by the manufacturer under Secs. 159.55 and 159.57.

(c) Except for devices described in paragraph (d) of this section, the devices must process and discharge or store human sewage over at least an 8-consecutive hour period on at least 10 days within a 20-day period. The device must receive human sewage consisting of fecal matter, urine, and toilet paper in a ratio of four urinations to one defecation with at least one defecation per person per day. Devices must be tested at their average rate of capacity as specified in Sec. 159.57. In addition, during three periods of each day the system must process sewage at the peak capacity for the period of time it is rated at peak capacity.

(d) A device that processes and discharges continuously between individual use periods or a large device, as determined by the Coast Guard, must process and discharge sewage over at least 10-consecutive days at the average daily capacity specified by the manufacturer. During three periods of each day the system must process sewage at the peak capacity for the period of time it is rated at peak capacity. The sewage for this test must be fresh, domestic sewage to which primary sludge has been added, as necessary, to create a test sewage with a minimum of 500 milligrams of suspended solids per liter.

Sec. 159.123 Coliform test: Type I devices.

(a) The arithmetic mean of the fecal coliform bacteria in 38 of 40 samples of effluent discharged from a Type I device during the test described in Sec. 159.121 must be less than 1000 per 100 milliliters when tested in accordance with 40 CFR Part 136.

(b) The 40 samples must be taken from the device as follows: During each of the 10-test days, one sample must be taken at the beginning, middle, and end of an 8-consecutive hour period with one additional sample taken immediately following the peak capacity processing period.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15326, Apr. 12, 1976]

Sec. 159.125 Visible floating solids: Type I devices.

During the sewage processing test (Sec. 159.121) 40 effluent samples of approximately 1 liter each shall be taken from a Type I device at the same time as samples taken in Sec. 159.123 and passed expeditiously through a U.S. Sieve No. 12 as specified in ASTM E 11 (incorporated by reference, see Sec. 159.4). The weight of the material retained on the screen after it has been dried to a constant weight in an oven at 103 deg.C. must be divided by the volume of the sample and expressed as milligrams per liter. This value must be 10 percent or less of the total suspended solids as determined in accordance with 40 CFR Part 136 or at least 38 of the 40 samples.

Note: 33 U.S.C. 1321(b)(3) prohibits discharge of harmful quantities of oil into or upon the navigable waters of the United States or adjoining shorelines or into or upon the waters of the contiguous zone. Under 40 CFR 110.3 and 110.4 such discharges of oil include discharges which:

- (a) Violate applicable water quality standards, or
- (b) Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. If a sample contains a quantity of oil determined to be harmful, the Coast Guard will not certify the device.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15326, Apr. 12, 1976; USCG-1999-5151, 64 FR 67176, Dec. 1, 1999]

Sec. 159.126 Coliform test: Type II devices.

(a) The arithmetic mean of the fecal coliform bacteria in 38 of 40 samples of effluent from a Type II device during the test described in Sec. 159.121 must be 200 per 100 milliliters or less when tested in accordance with 40 CFR Part 136.

(b) The 40 samples must be taken from the device as follows: During each of the 10 test days, one sample must be taken at the beginning, middle and end of an 8-consecutive hour period with one additional sample taken immediately following the peak capacity processing period.

[CGD 75-213, 41 FR 15326, Apr. 12, 1976]

Sec. 159.126a Suspended solids test: Type II devices.

During the sewage processing test (Sec. 159.121) 40 effluent samples must be taken at the same time as samples are taken for Sec. 159.126 and they must be analyzed for total suspended solids in accordance with 40 CFR Part 136. The arithmetic mean of the total suspended solids in 38 of 40 of these samples must be less than or equal to 150 milligrams per liter.

[CGD 75-213, 41 FR 15326, Apr. 12, 1976]

Sec. 159.127 Safety coliform count: Recirculating devices.

Thirty-eight of forty samples of flush fluid from a re-circulating device must have less than 240 fecal coliform bacteria per 100 milliliters. These samples must be collected in accordance with Sec. 159.123(b) and tested in accordance with 40 CFR Part 136.

[CGD 73-83, 40 FR 4624, Jan. 30, 1975, as amended by CGD 75-213, 41 FR 15326, Apr. 12, 1976]

Sec. 159.129 Safety: Ignition prevention test.

(a) Components of a device that are a potential ignition source in an explosive atmosphere must pass the test in paragraph (b) or (c) of this section or meet the requirements of paragraph (d) or have a specific warning in the instruction manual required by Sec. 159.57 that the device should not be installed in an explosive atmosphere.

(b) Components protected by vapor exclusion must be placed in a chamber filled with a rich mixture of gasoline or propane in air with the pressure being varied from 0 to 2 psig once an hour for 8 hours. Vapor readings must be taken in the void being protected and must indicate a leakage less than 20 percent of the lower explosive limit of the mixture in the chamber.

(c) Components providing ignition protection by means other than vapor exclusion must be fitted with an ignition source, such as a spark plug, and a means of injecting an explosive mixture of gasoline or propane and air into the void that protects the component. Connections must be made so as to minimize any additional volume added to the protected void by the apparatus delivering the explosive mixture. The component must be placed in a chamber filled with an explosive mixture and there must be no ignition of the explosive mixture surrounding the component when the following tests are conducted:

(1) Using any overload protection that is part of the device, the potential ignition source must be operated for one half hour at 110 percent of its rated voltage, one half hour at 50 percent of its rated voltage and one half hour at 100 percent of its rated voltage with the motor or armature locked, if the potential ignition source is a motor or part of a motor's electrical circuit.

(2) With the explosive mixture in the protected void, the test installed ignition source must be activated 50 times.

(3) The tests paragraphs (c) (1) and (2) of this section must be repeated with any plugs removed.

(d) Components that are certified as being intrinsically safe in accordance with the Instrument Society of America (RP 12.2) or explosion proof in accordance with the Underwriters Laboratories STD 698 in Class I, Group D hazardous locations (46 CFR 111.80-5(a)) need not be subjected to this testing.

Sec. 159.131 Safety: Incinerating device.

An incinerating device must not incinerate unless the combustion chamber is closed, must purge the combustion chamber of combustible fuel vapors before and after incineration must secure automatically if the burner does not ignite, must not allow an accumulation of fuel, and must neither produce a temperature on surfaces adjacent to the incineration chamber higher than 67 deg.C nor produce a temperature on surfaces in normal body contact higher than 41 deg.C when operating in an ambient temperature of 25 deg.C. Unitized incineration devices must completely burn to a dry, inert ash, a simultaneous defecation and urination and must not discharge fly ash, malodors, or toxic substances.

Subpart D--Recognition of Facilities

Sec. 159.201 Recognition of facilities.

A recognized facility is an independent laboratory accepted by the Coast Guard under 46 CFR 159.010 to perform the tests and inspections required under this part. A list of accepted laboratories is available from the Commandant (G-MSE-3).

[CGD 95-028, 62 FR 51194, Sept. 30, 1997, as amended by USCG-1999-5832, 64 FR 34715, June 29, 1999]

